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SUPREME COURT, U.S.

339-637

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 34

G. W. McLAURIN, APPELLANT,

vs.

**OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION,
BOARD OF REGENTS OF UNIVERSITY
OF OKLAHOMA, ET AL.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

FILED MARCH 1, 1949.

2. The court, in so far as the cause of action in the complaint seeking to recover damages against defendants in the sum of \$5,000.00 is concerned, lacks jurisdiction not only over the subject matter of said cause of action but over the person of defendants in relation thereto, because said cause of action is in reality, if not in name, a suit against the State of Oklahoma to which the state has not given its consent.

3. The court lacks jurisdiction over the subject matter of this action and over the person of defendants because the amount in controversy is less than \$3,000.00, exclusive of interest and costs.

4. The court lacks jurisdiction over the subject matter of this action and over the person of defendants because said action, in effect, seeks to mandamus defendants to admit plaintiff to the course of instruction set forth in his complaint.

[fol. 19] 5. Defendants deny that this court has jurisdiction of this cause as is in effect asserted in *Paragraph 1* of the complaint.

6. Defendants admit the material allegations of fact set forth in *Paragraph 2* of the complaint.

7. Defendants admit the material allegations of fact set forth in *Paragraph 3* of the complaint, except the allegation that plaintiff has "in all particulars met the qualifications necessary for admission to the Graduate School of the University of Oklahoma in the field of education, which fact the defendants have admitted," and in this connection allege that while plaintiff is scholastically and morally qualified for "tentative admission" to said school in said field (and, upon the furnishing of certain transcripts of credits, to unqualified admission thereto), he does not have the qualifications necessary for admission to said school in said field by reason of the statutory provisions of this state abstracted in *Paragraph 12* of the complaint. In relation to the "furnishing of certain transcripts of credits," above mentioned, defendants further allege that when plaintiff on January 28, 1948 filed the application referred to in *Paragraph 7* of the complaint for admission "to the graduate school of the University of Oklahoma in the field of education" (same being refused and rejected on February

2, 1948, as alleged in said paragraph), which application stated that plaintiff had attended Langston University, Jackson College, Kansas State Teachers College and the University of Kansas, plaintiff failed to attach to said application transcripts of his credits at said institutions (other than at Langston University), as required by the rules and regulations of the University of Oklahoma, which failure, although then called by said authorities to the attention of plaintiff, was not then, nor has since been remedied.

8. Defendants deny the material allegations of fact, if any, and the conclusions of law set forth in *Paragraph 4* [fol. 20] of the complaint, and in this connection allege that if this is a class action, as contended by plaintiff in said paragraph, the only persons coming within said class are negroes qualified to take a course of instruction given at the University of Oklahoma, but not given at Langston University, to take which a qualified negro duly applied for admission to the University of Oklahoma on or about January 28, 1948, the date of plaintiff's application.

9. Defendants admit the material allegations of fact set forth in *Paragraph 5* of the complaint.

10. Defendants admit the material allegations of fact set forth in *Paragraph 6* of the complaint.

11. Defendants admit the material allegations of fact set forth in *Paragraph 7* of the complaint, except the allegation that plaintiff possessed and still possesses all "other lawful qualifications" for admission to the course of instruction of the University of Oklahoma referred to therein, and the allegation that plaintiff's application for admission to said course was "arbitrarily and illegally" rejected.

12. Defendants admit the material allegations of fact set forth in *Paragraph 8* of the complaint, subject to the exceptions noted in *Paragraph 11* hereof.

13. Defendants admit the material allegations of fact set forth in *Paragraph 9* of the complaint, but deny the conclusions of law set forth therein. In this connection defendants allege that up until January 28, 1948, the date of the application involved here, only one qualified negro, Ada Lois Sipuel, had applied for and been denied admission

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WESTERN DISTRICT OF OKLAHOMA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOV. 18, 1949.

to the University of Oklahoma, and that there has been no such applications filed with said University since said date.

14. Defendants admit the material allegations of fact relating to the defendants, Board of Regents of the University of Oklahoma, George L. Cross, Lawrence H. Snyder [fol. 21] and J. E. Fellows, set forth in *Paragraph 10* of the complaint, and specifically allege that said defendants, on February 2, 1948, acted upon plaintiff's application of January 28, 1948 for admission to the University of Oklahoma by rejecting the same, as stated in *Paragraph 7* of the complaint. Defendants further allege that when an application, such as is involved here, has been refused or rejected by the proper authorities of the University, same, according to the rules and regulations of the University, is put in what is known as the "Inactive File" and is not further considered by said authorities unless and until the applicant, either in writing or orally, requests them to reactivate the same, at which time, before the application will be reactivated and again considered by said authorities, the applicant is required to furnish a statement as to whether or not he has attended any institution of higher education since he filed said application, and if so, to furnish a transcript of his grades and standing thereat, and in this connection defendants allege that, although said rules and regulations were by said authorities on January 28, 1948 called to the attention of plaintiff, no such request has been made by plaintiff since his said application was rejected on February 2, 1948.

Defendants admit the material allegations of fact relating to the defendant, Oklahoma State Regents for Higher Education, set forth in the last two sentences of said *Paragraph 10*, to-wit: that plaintiff appealed to said regents "to be afforded an opportunity to take the required courses in an institution of higher learning within the State of Oklahoma" and that said appeal has not been granted, and in this connection allege that the position of said regents in the premises, as stated thereby in a letter to the Attorney General of Oklahoma, dated August 17, 1948, is as follows:

[fol. 22] "On or about January 28, 1948, the Oklahoma State Regents for Higher Education received notice of the January 28, 1948 application of the above

plaintiff [G. W. McLaurin], a negro, as well as notice of the applications of five other negroes of said date, to attend certain graduate courses of instruction at the University of Oklahoma for the semester beginning January 29, 1948. While said courses of instruction are not given at Langston University (the only institution of higher education in Oklahoma for negroes), said Regents, by reason of the fact that they did not then, nor since, have sufficient appropriations to establish said courses of instruction, nor any other course of instruction now given at the University of Oklahoma but not given at Langston University, have not established, nor begun to establish, at or in connection with Langston University, courses of instruction such as are above referred to. In this connection said Regents cannot establish such courses of instruction at or in connection with Langston University, unless and until they receive a sufficient appropriation from our State Legislature to establish such courses of instruction 'substantially equal' to like courses of instruction at the University of Oklahoma."

15. Defendants admit the material, but not the speculative, allegations of fact set forth in *Paragraph 11* of the complaint, but deny that the "order, policy, custom and usage," referred to therein, deprives plaintiff of rights guaranteed by the Constitution of the United States.

16. Defendants admit the material allegations of fact set forth in *Paragraph 12* of the complaint.

17. Defendants admit the material allegations of fact, if any, set forth in *Paragraph 13* of the complaint, but deny the conclusions of law set forth therein.

18. Defendants admit the material allegations of fact, if any, set forth in *Paragraph 14* of the complaint, but deny the conclusions of law set forth therein.

19. Defendants admit the material allegations of fact set forth in *Paragraph 15* of the complaint, except the allegation set forth in the last sentence of said paragraph. Defendants allege that the "next regular term of the graduate school of the University of Oklahoma," referred

to in said paragraph, will begin on Monday, September 20, 1948.

[fol. 23] 20. Defendants deny the conclusions of law set forth in *Paragraph 16* of the complaint.

21. Defendants deny the material allegations of fact set forth in *Paragraph 17* of the complaint.

22. Defendants deny the material allegations of fact, if any, and the conclusions of law set forth in *Paragraph 18* of the complaint.

23. Defendants admit the material allegations of fact, but not the conclusions of law, set forth in *Paragraph 19* of the complaint.

24. Defendants allege and admit that on January 28, 1948, the last day of the regular registration period for the semester of the University of Oklahoma beginning January 29, 1948 and ending May 28, 1948 (same being the "second semester of the 1947-48 school term" of said University referred to in Paragraph 7 of the complaint), the plaintiff, G. W. McLaurin, a negro, who was then and there qualified, except as to race and color, to take a graduate course in the field of education leading to a doctorate degree in Oklahoma University same being a state-supported institution for higher education, duly applied for admission (subject to the exception as to "tentative admission" referred to in Paragraph 7 hereof) to said University to take said course of instruction, and that on February 2, 1948, plaintiff's said application was rejected by the proper authorities of the University of Oklahoma solely on the ground of his race and color.

25. Defendants allege and admit that the University of Oklahoma "is the only school maintained and operated by the state which offers a doctorate degree" in education, as stated in Paragraph 6 of the complaint, but allege that plaintiff's application to take said course of instruction was the first and only such application ever made by a negro, either at the enrollment period of said "second [fol. 24] semester of the 1947-48 school term" or at the enrollment period of any other semester of said University, and that plaintiff's said application was not made until the day before said course of instruction for said second semester began.

State of Oklahoma and are resident and domiciled in said state.

3. The plaintiff is a Negro, is over eighteen years of age and holds a Masters Degree from the University of Kansas at Lawrence, Kansas, a duly accredited college; that he is of good moral character and has in all particulars met the qualifications necessary for admission to the graduate school of the University of Oklahoma in the field of education which fact the defendants have admitted; that he is ready, willing and able to pay all lawful charges and tuition requisite to his admission, and he at all times material herein was and is willing and able to comply with all lawful rules and regulations requisite to his admission therein.

4. This is a class action authorized by rule 23A of the Rules of Civil Procedure of the District Courts of the United States. The rights involved are of common and general interest to the members of the class represented by the plaintiff, namely, Negro citizens of the United States and residents of the State of Oklahoma similarly situated who are duly qualified for admission to the University of Oklahoma and who are denied admission solely because of race or color. The members of the class are so numerous [fol. 3] as to make it impracticable to bring them all before the court and for this reason plaintiff prosecutes this action in his own behalf and on behalf of the class without specifically naming said members herein.

5. The defendant, Oklahoma State Regents for Higher Education is a state board created by Article 13A of the Constitution of Oklahoma as a "coordinating board of control for all state institutions" for higher education; the defendant, Board of Regents of the University of Oklahoma, is an administrative board and agency of the State of Oklahoma and exercises over-all authority with reference to the regulation of instruction and admission of students in the University and is an agency of the state operating as a part of the educational system of the state and maintained by appropriations from the public funds of the state raised by taxations from the citizens and taxpayers of the State of Oklahoma; the defendant, George L. Cross, is the duly appointed, qualified, and acting President of the said University and as such is subject to the authority of the said Board of Regents as an immediate agent governing

26. Defendants allege that if in a state, such as Oklahoma, having laws (70 O. S. 1941 §§ 455, 456 and 457, abstracted in Paragraph 12 of the complaint) requiring segregation of the white and negro races in education, there is a state agency which is under the mandatory duty to furnish separate educational facilities for qualified negroes substantially equal to those furnished whites when the need therefor by qualified negroes is brought to its attention, the equal protection clause of the Fourteenth Amendment of the Constitution of the United States is not violated if during a period of time reasonably necessary to establish such facilities the proper authorities of the educational institution for the whites decline to admit applying qualified negroes thereto.

27. Defendants allege that the Oklahoma State Regents for Higher Education, as held by the Supreme Court of Oklahoma in its opinion in the two Sipuel cases (180 Pac. 2d. 135 and 190 Pac. 2d. 437), have such a mandatory duty.

28. Defendants allege that, as shown in the latter part of Paragraph 14 hereof, the defendant, Oklahoma State Regents for Higher Education, will not be able to establish a "substantially equal" course of instruction at or in connection with Langston University to that involved here, that is, until they receive a sufficient appropriation from our state legislature to establish the same, and since said legislature will not convene until January 4, 1948, unless convened in a prior special session by the Governor, at which time it must be presumed the legislature will make such an appropriation and thereby enable the regents to carry out their said mandatory duty, defendants allege that the equal protection clause of the Fourteenth Amendment [fols. 25-26] of the Constitution of the United States will not be violated if until the time the legislature will be able to make said appropriation and the regents to thereon perform their said mandatory duty, the proper authorities of the University of Oklahoma decline to admit applying qualified negroes thereto.

WHEREFORE, premises considered, defendants respectfully ask the court to deny plaintiff the relief prayed for in

and controlling the several colleges and schools of the said University; the defendant, Lawrence H. Snyder, is the Dean of the Graduate College of said University whose duty comprises the governing of the said department, including the admission and acceptance of applicants eligible to enroll as students therein, including your plaintiff, the defendant, J. E. Fellows, is the Dean of Admissions and Records of the said University possessing authority to pass upon the eligibility of applicants who seek to enroll as students therein, including your plaintiff. All of the individual [fol. 4] defendants come under the authority, supervision, and control, and act pursuant to the orders and policies established by the defendant, Board of Regents of the University of Oklahoma; all of said individual defendants are being sued in their official capacity.

6. The University of Oklahoma is the only school maintained and operated by the State of Oklahoma which offers a doctorate degree in School Administration sought by the plaintiff; the plaintiff desires to be admitted not later than the next regular registration period and is ready and willing to pay the uniform requisite fees and conform to the lawful uniform rules and regulations for admission.

7. During the enrollment period of the second semester of the 1947-1948 school term, plaintiff duly applied for admission to the said University for the purpose of taking such courses offered at said University as would entitle him to a doctorate degree in School Administration and at the time of his application he was possessed and still possesses all of the scholastic, moral and other lawful qualifications prescribed by the constitution and statutes of the State of Oklahoma, by the defendants, and each of them, and by the rules and regulations of the said University; that he was then and still is ready and willing to pay all lawful, uniform fees and charges and to conform to all lawful, uniform rules and regulations established by lawful authorities for admission to the said school; that the plaintiff's application has been arbitrarily and illegally rejected pursuant to a policy, custom and usage of denying to qualified Negro applicants the equal protection of the laws solely on the ground of race and color.

8. The plaintiff further states that on the 2nd day of February, 1948, after having complied with all of the rules

the complaint, and that the costs of this action be taxed to plaintiff.

• Mac Q. Williamson, Attorney General; Fred Hansen, First Assistant Attorney General; George T. Montgomery, Assistant Attorney General, Attorneys for Defendants.

Duly sworn to by George L. Cross. Jurat omitted in printing.

[fol. 27] IN UNITED STATES DISTRICT COURT,
PROCEEDINGS OF AUGUST 23, 1948.

BEFORE JUDGES MURRAH, VAUGHT AND BROADBENT

On this 23rd day of August, 1948, the parties appear in person and by their respective counsel and this cause comes on for hearing on the application of plaintiff for preliminary injunction. Counsel for the defendants raise the question of service, waives insufficiency thereof, and enters appearance on behalf of each of the defendants. The plaintiff asks and is granted leave to dismiss Paragraph 17 of complaint and Paragraph 8 of the prayer thereof, and to waive all claim for damages herein. The defendants are granted leave to file their answer instantler. Counsel for the plaintiff and the defendants make opening statements of fact and state their respective contentions. The defendants announce that they will stand on their answer and the stipulation of facts, and rest. Counsel for the plaintiff and defendant present their arguments on the law and said cause is submitted to the court for determination. Thereupon, ruling on said motion for preliminary injunction is taken under advisement and said cause is assigned for hearing on its merits and for final determination on Friday, September 24, 1948, at 10:00 A. M.

[fol. 28] IN THE DISTRICT COURT OF THE UNITED STATES,
WESTERN DISTRICT OF OKLAHOMA
[Title omitted]

AGREED STATEMENT OF FACTS—Filed Aug. 23, 1948

It is hereby stipulated and agreed by and between the plaintiff and the defendants, through their respective counsel, as follows:

and regulations governing the admission of students to the said department of the said University and even though he admittedly possessed all of the qualifications entitling him [fol. 5] to be admitted, his application for admission was refused and denied solely on the ground of his race and color, in violation of the Constitution and laws of the United States.

9. The defendants acting pursuant to the statutes of the State of Oklahoma have established and are maintaining an order, policy, custom and usage of denying to qualified Negro applicants the equal protection of the laws guaranteed by the Constitution of the United States by refusing to admit qualified Negroes solely because of race or color to all courses of study at the University of Oklahoma including those courses of study available only at the University of Oklahoma, such as the courses desired by the plaintiff.

10. The defendants, George L. Cross, Lawrence H. Snyder and J. E. Fellows, refuse to act favorably upon plaintiff's application and although admitting that plaintiff possesses all the qualifications necessary for admission to the said graduate school, refused and will continue to refuse to admit him on the grounds that the defendant, Board of Regents of the University of Oklahoma, has established a policy that Negro qualified applicants are not eligible for admission to the said graduate school of the University of Oklahoma solely because of race or color, even though the state has furnished no other facility or opportunity for the plaintiff. The plaintiff appealed directly to the Board of Regents of the University of Oklahoma for admission to the said graduate school and such board has, so far, refused to act in the premises and to admit plaintiff or other qualified Negroes solely because of race or color. Subsequent thereto, plaintiff appealed to the defendant, the Oklahoma State Regents for Higher Education, to be afforded [fol. 6] an opportunity to take the required courses at an institution of higher learning within the State of Oklahoma. This appeal has likewise been refused.

11. Plaintiff is informed and believes and therefore avers that but for the Oklahoma statutes set out in the following paragraph, defendants would not have established and would not be maintaining the order, policy, custom and usage of excluding qualified applicants from attending the University of Oklahoma to take courses offered only at

1.

That the plaintiff is a resident and citizen of the United States, the State of Oklahoma, Oklahoma County and Oklahoma City, and desires to take a graduate course in Education leading to the Doctors degree.

2.

That Oklahoma University is a part of the educational system of the State of Oklahoma maintained by the taxpayers of the state from funds derived from taxation placed upon all of the taxpayers; that it is the only institution in the state supported by taxation in which the plaintiff can pursue a graduate course in Education leading to the Doctors degree.

3.

That during the enrollment period of the second semester of the 1947-1948 school term, he duly applied for admission to the said university for the purpose of taking such course [fol. 29] as would entitle him to a Doctors degree in Education, and at the time of his application he was possessed and still possesses all of the scholastic and moral qualifications prescribed by the rules and regulations of the university entitling him to be admitted, except for the fact that he is a member of the Negro race.

4.

That he has complied with all of the rules and regulations of the said university entitling him to "tentative admission" to the graduate school of the university in the field of education, and, upon the furnishing of certain transcripts of credits, to unqualified admission thereto, and is willing and able to pay all lawful, uniform fees and charges of the university.

5.

That the defendant, the Board of Regents of the University of Oklahoma, is an administrative agency of the state and exercises over-all authority with reference to the regulation and instruction and admission of students to the university. It is an agency of the state operating as a part of the educational system of the state and is maintained by appropriations from public funds raised by taxation from the citizens and taxpayers of the state.

that institution. The plaintiff is informed and believes and therefore avers that but for the Oklahoma statutes set out in the following paragraph the defendants would not continue to deprive the plaintiff of his rights guaranteed by the Constitution of the United States as set out more fully below.

12. The defendant, Board of Regents, have established and are maintaining the order, policy, custom and usage of excluding all qualified Negroes solely because of race and color from all schools, colleges, and divisions of the University of Oklahoma including the Graduate School of the University of Oklahoma pursuant to sections 455, 456 and 457 of Title 70 of the Oklahoma statutes (1941) which statutes provide in part as follows:

That 70 O.S. 1941, Section 455 makes it a misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$500.00, for

"any person, corporation or association of persons to maintain or operate any college, school or institution of this State where persons of both white and colored races are received as pupils for instruction,"

and provides that each day same is so maintained or operated "shall be deemed a separate offense."

[fol. 7] That 70 O.S. 1941, Section 456, makes it a misdemeanor, punishable by a fine of not less than \$10.00 or more than \$50.00 for any instructor to teach

"in any school, college or institution where members of the white race and colored race are received and enrolled as pupils for instruction,"

and provides that each day such an instructor shall continue to so teach "shall be considered a separate offense."

That 70 O.S. 1941; section 457, makes it a misdemeanor, punishable by a fine of not less than \$5.00 nor more than \$20.00, for

"any white person to attend any school, college or institution, where colored persons are received as pupils for instruction,"

and provides that each day such a person so attends "shall be deemed a distinct and separate offense."

13. Plaintiff, and other qualified Negroes, are excluded from the University of Oklahoma solely because of race

6.

That on the 28th day of January, 1948, same being the last day of the enrollment period for the semester beginning January 29, 1948, after having complied in the manner set forth in Paragraph 4 hereof with the rules and regulations of the university, he applied for admission to the said school and on the 2nd day of February, 1948, his application was denied solely on the grounds of his race and color.

7.

[fols. 30-31] That the failure of plaintiff to request reactivation of his January 28, 1948 application at or prior to the beginning of the 1948 summer term of the University of Oklahoma, will not prevent him from having said application reactivated, by complying with the applicable rules and regulations of the university, during the enrollment period for the fall term of the University beginning September 20, 1948.

8.

That if the plaintiff, being otherwise qualified for admission to the said university, applies during the enrollment period for admission to the fall term of the university, defendants, pursuant to the statutes set out in Paragraph 11 of plaintiff's complaint, that is, if said statutes have not then been repealed or modified, would deny his application solely because of his race and color.

Amos T. Hall, Attorney for Plaintiff. Mac Q. Williamson, Attorney General of Oklahoma; Fred Hansen, First Assistant Attorney General; George T. Montgomery, Assistant Attorney General, Attorneys for Defendants.

[fol. 32] IN UNITED STATES DISTRICT COURT

ORDER REASSIGNING CASE—Sept. 21, 1948

Before Judges Murrah, Vaughn & Broadus

On this 21st day of September, 1948, it is ordered by the Court that this cause be re-assigned for trial on merits and for final determination from Friday, September 24, 1948 to Wednesday, September 29, 1948, at 10:00 A. M.

[fol. 33]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 4039 (Civil)

G. W. McLAURIN, Plaintiff

VS.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, et al.,
Defendants.

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Before:

THE HONORABLE ALFRED P. MURRAH,
Judge of the United States Court of Appeals;

THE HONORABLE EDGAR S. VAUGHT,
United States District Judge for the Western
District of Oklahoma;

THE HONORABLE BOWER BROADUS,
United States District Judge for the Northern,
Eastern and Western Districts of Oklahoma.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

In the United States Court House and Post
Office Building, Oklahoma City, Oklahoma;
September 29, 1948.

APPEARANCES:

For the Plaintiff:

AMOS T. HALL,
107½ North Greenwood,
Tulsa, Oklahoma.

THURGOOD MARSHALL,
20 West 40th Street,
New York, New York.

[fol. 34]

For the Defendant:

HONORABLE MAC Q. WILLIAMSON,
Attorney General, State of Oklahoma,
 State Capitol Building,
 Oklahoma City, Oklahoma.

[fol. 35]

PROCEEDINGS

September 29, 1948

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Williamson: May it please your Honors, I desire at this time to offer for the record a carbon original of a letter—I believe that this is a copy, an exact copy, a signed copy of a four-page letter, which was written by the Governor of this State, Honorable Roy J. Turner, directed to the three judges here by name, and which endeavors to reflect the views and policy of the Head of the government of this State with regard to the litigation at hand, and with regard to what conceivably ought to be done about it by the State.

I took the liberty to ask the Governor to write the letter, thinking that it was not inappropriate that this Court might have word from the Chief Executive of a sovereign state as to the policy, as to how the State felt, its responsible heads felt, about the issue; and for that reason the letter was written and has been delivered by mail to each of the gentlemen composing this three-judge court.

Now, because we deem the letter of sufficient relevancy to challenge at least the passing attention of the Court, I now move that it be admitted in the record as part of the record in this case, and I'd like to offer it to the Clerk for identification as Defendant's Exhibit 1.

(The letter from the Governor was identified by the [fol. 36] Court Clerk as Defendant's Exhibit 1.)

Judge Murrah: The Court understands that counsel for the plaintiff has seen the proffered exhibit. What do you say?

Mr. Marshall: We were given a copy of the exhibit and we do not object to the authenticity or any of the technical objections to the letter, but we, of course, reserve the right as to its relevancy in this particular matter.

Judge Murrah: And you do object to its admission on the grounds of irrelevancy?

•their agents, and employees from excluding the plaintiff and others on whose behalf he sues from admission to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color.

3. That this Court issue a preliminary or interlocutory injunction restraining the defendants and each of them, their agents, and employees from enforcing and maintaining the order, policy, custom and usage adopted pursuant to sections 455, 456 and 457 of the Oklahoma Statutes of 1941 whereby the plaintiff and other qualified Negro applicants are excluded from admission to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color.

4. That this Court issue a preliminary or interlocutory injunction restraining the defendants and each of them, their agents, and employees from all action pursuant to sections 455, 456 and 457 of the Oklahoma Statutes of 1941 which preclude the admission of the plaintiff and other qualified Negroes to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color on the grounds that said statutes as applied to this plaintiff and others on whose behalf he sues denies to them the rights guaranteed by the equal protection and due process clauses of the Fourteenth Amendment, the liberty guaranteed by the Fourteenth Amendment to the United States Constitution and sections 41 and 43 of Title 8 of the United States Code.

[fol. 11] 5. That this Court issue a permanent injunction restraining the defendants and each of them, their agents, and employees from excluding the plaintiff and others on whose behalf he sues from admission to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color.

6. That this Court issue a permanent injunction restraining the defendants and each of them, their agents, and employees from enforcing and maintaining the order, policy, custom and usage adopted pursuant to sections 455, 456 and 457 of the Oklahoma Statutes of 1941 whereby the plaintiff and other qualified Negro applicants are excluded from admission to courses offered only at the graduate

Mr. Marshall: Only on the grounds of its relevancy, as I said.

Judge Murrah: That is very fair. It will be admitted and made a part of the record in this case.

(Defendant's Exhibit 1 was received in evidence.)

Mr. Williamson: Now if it please the Court, one other matter—two other matters—that I would like to call to the attention of the Court: One of them was a statement which I made in the first hearing in this matter to the effect that I was not entirely sure that I had formal authority to represent the Regents for Higher Education, as well as the Board of Regents of Oklahoma University. The Court will remember, no doubt, that I made the observation that the service was far from complete in my humble judgment and, notwithstanding that, the case proceeded, and I assumed the duty and burden of obtaining from each Board a resolution, and I now wish to state for the record that each of those constitutional State boards has by resolution duly entered in the respective minutes authorized the Attorney General to be here and speak for them and represent them, though not individually.

Judge Murrah: Enter the appearance for the Board.

Mr. Williamson: Indeed.

Judge Murrah: For each Board.

Mr. Williamson: Yes, sir.

Judge Murrah: And to represent them in this Court.

Mr. Williamson: So that we understand the Boards are here properly. Now, one other matter that I would like to call to the attention of the Court: There was some discussion in the other hearing about the precise quality of the record, that is, the scholastic record of the plaintiff here, McLaurin. The Court will recall there were certain details that needed to be supplied, details as to the character of work he had received, and of that nature. The Court will recall there was some colloquy back and forth across the table and it was agreed that those matters that were not in order would be furnished. I now desire to state for the record that since the adjournment of the former hearing, plaintiff McLaurin has supplied the needed and necessary detail in order to round out his application for admission to the School of Education, leading to a doctorate [fol. 38] in that School, so that the record may show our admission that his credentials have been put in order.

schools of the University of Oklahoma solely because of race and color.

7. That this Court issue a permanent injunction restraining the defendants and each of them, their agents, and employees from all action pursuant to sections 455, 456 and 457 of the Oklahoma Statutes of 1941 which preclude the admission of the plaintiff and other qualified Negroes to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color on the grounds that said statutes as applied to this plaintiff and others on whose behalf he sues denies to them the rights guaranteed by the equal protection and due process clauses of the Fourteenth Amendment, the liberty guaranteed by the Fourteenth Amendment to the United States Constitution and sections 41 and 43 of Title 8 of the United States Code.

8. That the plaintiff have judgment for Five Thousand (\$5000.00) Dollars damages.

[fols. 12-13] 9. That this Court will allow such costs herein, and such further, other additional or alternative relief as may appear to the Court to be just and equitable in the premises.

Amos T. Hall, 107¹/₂ N. Greenwood Avenue, Tulsa, Oklahoma; Thurgood Marshall, 20 West 40th Street, New York, Attorneys for Plaintiff.

Duly sworn to by G. W. McLaurin. Jurat omitted in printing.

Judge Murrah: Any further statement?

Mr. Hall: That's all.

Mr. Marshall: No, sir, that's all.

Judge Murrah: May the case close?

Mr. Williamson: The case may close.

RULING OF THE COURT

Judge Murrah: The Court adopts the stipulation in this case as the facts, and so finds.

Based upon those facts, the Court holds that the plaintiff in this case is entitled to secure legal education.

Mr. Williamson: I don't believe it is legal education.

Judge Murrah: Doctors education—I beg pardon—entitled to secure postgraduate education in this State by a state institution. The Court further holds that to this time he has been denied that right, although application has been duly made therefor during the same period these particular educational facilities have been afforded by the State to other groups.

The Court further holds that the State is under the constitutional duty to provide this plaintiff with the education he seeks as soon as it does for applicants of any other group. That is the settled law, made applicable and apposite to this case.

[fol. 39] The Court further holds that in so far as the statutes of the State of Oklahoma drawn in issue here deny or deprive this plaintiff of admission to the University of Oklahoma for the purpose of pursuing the course he seeks to pursue there, are unconstitutional and void. Now that does not mean, of course, that these laws cannot be made to stand, with the power of the State to provide equal segregated facilities, provided that those facilities are equal and that they are afforded as soon as they are afforded to any other group.

Now our attention has been called, and we have seen a statement of the Governor of this State, in which he commits the State to a certain course of action designed to afford, to comply, with the constitutional mandate. In that connection, we think it appropriate for the Court to state that it is not our function to say what the State shall do in order to comply with its acknowledged responsibility to its citizens. Rather, it is our function to say whether what has been done or is being done meets the constitutional mandate.

In the performance of this important function, we sit as a court of equity with power to fashion our decree in accordance with right and justice under the law. Accordingly we refrain at this time from issuing or granting injunctive relief on the assumption that the State will follow the law in the constitutional mandate.

[fol. 40] We retain jurisdiction of this case, however, with full power to issue such further orders and decrees as may be deemed necessary and proper to secure this plaintiff the equal protection of the laws, which, translated into terms of this lawsuit, means equal facilities—excuse me—equal educational facilities.

We therefore recess this case at this time, with the understanding that either party may apply for further relief consistently with the pleadings in the case.

Anything further? You understand, gentlemen? That will be the judgment of this Court.

Mr. Williamson: I would like to request of the Reporter to transcribe a copy as soon as convenient.

Judge Murrah: We will prepare a formal judgment and decree in accordance with this forthwith, or within the next few days, but that is the judgment of this Court, and judgment entered as of this date.

Any comment, anything further?

Mr. Williamson: No, sir.

Mr. Marshall: That's all.

(Whereupon, the proceedings in the above-styled cause were adjourned.)

CHARGES:

Plaintiff billed \$6.40

Defendant billed \$6.40

(Daily copy rate)

[fol. 41] DEFENDANT'S EXHIBIT 1

MAC Q. WILLIAMSON

Attorney General

State of Oklahoma

Office of the Attorney General, Oklahoma City

September 28, 1948

Honorable Edgar S. Vaught
United States District Judge
Federal Building
Oklahoma City, Oklahoma

RE: McLaurin v. Oklahoma State Board
of Higher Education, et al.,
No. 4329, U. S. District Court for
the Western District of Oklahoma

My dear sir:

Since our conference with the three members of the Court and opposing counsel, had in chambers at the conclusion of the formal presentation of argument herein on August 23rd and in view of comment there made, I have conceived the idea that it would not be inappropriate for the Court (as well as for all concerned) to have from the Governor of the State of Oklahoma a narrative statement as to his official views and policy in this controversy, which is fraught with such wide-spread interest in and to the State and its people.

Hence, I have taken the liberty to request, and the Governor has prepared, such a statement; and I am herewith enclosing three signed copies of same, for the respective members of the Court, and would thank you to pass copies on to the other judges, retaining one for yourself.

Inasmuch as the Court re-convenes on Wednesday morning, September 29th (which is now a matter of hours), I am retaining in my files and will at Wednesday's session personally present copies thereof to opposing counsel.

Very respectfully, Mac Q. Williamson, Attorney
General of Oklahoma.

MQW:LW

[fol. 42]

ROY J. TURNER
Governor

State of Oklahoma
Office of the Governor
Oklahoma City
September 27, 1948

Honorable A. P. Murrah, Judge,
U. S. Circuit Court of Appeals,
Oklahoma City, Oklahoma.
Honorable Edgar S. Vaught, Judge,
U. S. District Court for the Western District,
Oklahoma City, Oklahoma.

Honorable Brower Broadus, Judge,
U. S. District Court for the Western District,
Oklahoma City, Oklahoma.

In re: McLaurin vs. Oklahoma State Board
of Higher Education, et al., No.
4239, U. S. District Court for the
Western District of Oklahoma.

Gentlemen:

The Attorney General of the State of Oklahoma has requested that I, as the Governor of the State, present in writing my views of the State's policy with reference to the above case now pending in your court. Pursuant thereto I am pleased to submit the following statement.

The State's position in the McLauren action was: That it was not aware of the desires of this plaintiff, or of any other person of African blood for instruction in the desired courses until January 28, 1948, and that it should have a reasonable time to provide such a course of study upon a separate but equal basis, or that it should have a reasonable time to amend its existing laws in such manner as to offer the desired courses in existing State institutions.

The State Statutes, of course, prevent the governing authorities from offering or permitting mixed classes, and also prevent faculty members from teaching mixed classes, and also prevent white students from attending a school or participating in a course of study where mixed classes are permitted. Neither the administrative officials, the [fol. 43] instructors, nor the students could have been expected to violate these express provisions of the Statutes.

From the statements made and the questions promulgated by this Court it is apparent that the State is faced with four alternatives:

(a) To do nothing about the matter and await the decision of this Court;

(b) To establish separate schools offering equal educational facilities to colored students;

(c) To discontinue those courses of study in schools of higher education for the white race that are not offered to members of the colored race;

(d) To convoke the Legislature in special session to amend the existing State Statutes in such manner that this plaintiff and members of the colored race may receive courses of study in schools of higher education where such

courses are desired but not offered in separate schools for the colored race.

The first alternative would have the effect of abrogating the segregation laws of the State of Oklahoma relating to higher education that have been in effect and have been a policy of this State since 1909. It would have a much more far reaching effect than is contemplated or required by the Constitution of the United States.

The second alternative would require approximately \$10,000,000 to provide such an educational institution, and it would require approximately \$500,000 per year to maintain. It would require years to complete. It is questionable whether or not it could be adequately staffed with colored instructors. When and if such an institution is completed and staffed, it would serve a mere handful of students. It is impractical, and is beyond the State's present financial ability.

The third alternative is a backward step that the State of Oklahoma cannot accept.

In my opinion, *the fourth alternative* is the answer to our problem. This is primarily a problem to be adjusted by the people and their duly authorized representatives. [fol. 44] When the present action was instituted on August 5, 1948, I hesitated to call a special session of the Legislature. We had just concluded a primary election which resulted in the selection of sixty-two new House members out of a total of one hundred fifteen, and the selection of nine new Senate members out of a total of twenty-two. Thus, out of a total of 137 legislative seats to be filled, the July primaries actually furnished seventy-one new members of the Legislature. I feel that the people are entitled to adjust the problem through their newly chosen representatives. The general election may result in further changes. It will be held on November 2, 1948. The newly elected members of the Legislature may qualify fifteen days later. On or after November 18, 1948, the Legislature could be summoned into special session if the exigencies of the situation demand such action.

Let me point out, however, that the legislative body should be entitled to a few days notice of such special session. It would require a few days to organize itself properly. Its deliberations and actions would be interrupted and impaired by the intervening Thanksgiving,

Christmas and New Year's holidays. I know that if the State is allowed to pursue the *fourth alternative above*, that this plaintiff, as well as other members of his class, are entitled to immediate action; but, as a matter of fact, if the matter is deferred until November 18, this plaintiff will secure no greater benefit that he would secure by awaiting the general session of the Legislature. The second semester in Oklahoma schools of higher education commences on January 31, 1948. Enrollments are permitted until February 23, 1949. A special session of the Legislature during the month of November, and the amendment of the State Statutes would offer him instruction in the desired courses at the second semester. The general session of the Legislature, beginning January 4, 1949, will accomplish the same purpose. I know of no other State problem that requires a special session of the Legislature. The large sum of money that must be expended in a special session might just as well be expended in furnishing the type of education required.

Proposed amendments to our existing Statutes have been prepared and are now being discussed and studied. I have personally discussed the changes with many leaders of the Legislature, and have been assured that the problem will receive favorable consideration in the shortest possible time. If the matter can be thus deferred, I will include a request for the necessary statutory changes or amendments in my message to the Legislature, and request that [fols. 45-46] it be given priority over other pending legislation.

Not being learned in the law, I freely admit that my thoughts in the matter are controlled by the social and practical aspects thereof. Yet I believe that these matters should also be taken into consideration by the Court, and I hope that this Court can properly hold the matter in abeyance until the people's representatives have an opportunity to consider the matter at the regular session of the Legislature beginning January 4, 1949.

As before stated, it is my belief that the interests of the State will be better served by a consideration of this problem at the general session of the Legislature. I further believe that the plaintiff will lose no school time from the action taken at the general session rather than action taken at a special session held on November 18, 1948.

However, let me repeat, if the exigencies of the situation demand action during this intervening six weeks' period, I will call a special session to deal with the problem.

Yours very truly, Roy J. Turner, Governor of the
State of Oklahoma.

[fol. 47]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 4039 (CIVIL)

G. W. McLaurin, Plaintiff,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, et al,
Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW—

Filed Oct. 6, 1948

PRELIMINARY STATEMENT

By this suit, we are asked to enjoin the defendants from refusing to admit the plaintiff to the University of Oklahoma, for the purpose of pursuing a postgraduate course in education leading toward a doctor's degree. It is said that although having made timely application for admission, and being morally and scholastically qualified, he has been denied admission solely because, as a member of the Negro [fol. 48] Race, the laws of Oklahoma forbid his admission under criminal penalty. It is said that in these circumstances, refusal to admit the plaintiff to the University of Oklahoma, for the purpose of pursuing the course of study he seeks, is a deprivation of his rights to the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

FINDINGS OF FACT

I

In accordance with the stipulation, the court finds that the University of Oklahoma is an educational institution

maintained by the taxpayers of the State, from funds derived from uniform taxation, and that it is the only educational institution supported by public taxation in which the plaintiff can pursue a postgraduate course leading to a doctor's degree in education.

II

That during the enrollment period for the second semester for the 1947-1948 school term, plaintiff applied for admission to the University for the purpose of taking such courses which would entitle him to a doctor's [fol. 49] degree in education, and that at the time of his application, he possessed and still possesses all of the scholastic and moral qualifications prescribed by the University of Oklahoma for admission to the courses he seeks to pursue, and that he was denied admission to the University on February 2, 1948, solely because as a member of the Negro Race, the applicable laws of Oklahoma (70 O. S. 1941, Sections 455, 456 and 457) make it a criminal offense for any person to operate a school or college or any educational institution where persons of both white and colored races are received as pupils for instruction, or for any instructors to teach in, or any white person to attend, any such school.

CONCLUSIONS OF LAW

I

This suit arises under the Constitution and laws of the United States, and seeks redress for the deprivation of civil rights guaranteed by the Fourteenth Amendment. The court is therefore vested with jurisdiction, regardless of diversity of citizenship or amount in controversy. *Hague* [fol. 50] v. C. I. O., 307 U. S. 496, 514; *Douglas v. Jeannette*, 319 U. S. 157. Since a temporary injunction against the enforcement of the State laws on the grounds of their unconstitutionality is sought, the subject matter is properly cognizable by a three judge court under Section 266 of the Judicial Code, 28 U. S. C. A. 380.

II

We hold, in conformity with the equal protection clause of the Fourteenth Amendment, that the plaintiff is entitled to secure a postgraduate course of study in education leading to a doctor's degree in this State in a State institution,

and that he is entitled to secure it as soon as it is afforded to any other applicant. *Sipuel v. Board of Regents*, 332 U. S. 631; *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337. That such educational facilities are now being offered to and received by other applicants at the University of Oklahoma, and that although timely and appropriate application has been made therefor, to this time such facilities have been denied this plaintiff.

III

The court is of the opinion that insofar as any statute or [fol. 51] law of the State of Oklahoma denies or deprives this plaintiff admission to the University of Oklahoma for the purpose of pursuing the course of study he seeks, it is unconstitutional and unenforceable. This does not mean, however, that the segregation laws of Oklahoma are incapable of constitutional enforcement. We simply hold that insofar as they are sought to be enforced in this particular case, they are inoperative.

IV

Our attention has been called to and we have seen a statement of the Governor of this State in which he commits the State to a certain course of action, designed to afford equal segregated facilities to this plaintiff and members of his Race in compliance with the constitutional requirements. In that connection, we think it appropriate to state that it is not our function to say what the State shall do in order to comply with its acknowledged responsibilities to its citizens. Rather it is our function to determine whether what has been done and what is being done meets the constitutional mandate.

V

[fols. 52-53] In the performance of this important function, we sit as a court of equity, with power to fashion our decree in accordance with right and justice under the law. Accordingly, we refrain at this time from issuing or granting any injunctive relief, on the assumption that the law having been declared, the State will comply. We retain jurisdiction of this case, however, with full power to issue such further orders and decrees as may be deemed necessary and proper to secure to this plaintiff the equal protection of the laws.

which, translated into terms of this lawsuit, means equal educational facilities.

Alfred P. Murray, Judge of the U. S. Court of Appeals. Edgar S. Vaught, U. S. District Judge. Bower Broadbush, U. S. District Judge.

[fol. 54]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 4039 (CIVIL).

G. W. McLAURIN, Plaintiff,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, et al.
Defendants.

JOURNAL ENTRY OF JUDGMENT—Oct. 6, 1948

Be it remembered that this cause came on regularly for hearing before this duly constituted court on August 23, 1948. The plaintiff appeared in person and by his attorneys Thurgood Marshall and Amos T. Hall. The defendants appeared either in person, or by and through the Honorable Mac Q. Williamson, Attorney General of the State of Oklahoma, Fred Hansen and George T. Montgomery, Assistant Attorneys General. Testimony was introduced, argument was had, and the matter was continued until September 24, 1948, and was thereafter continued until September 29, 1948. Further evidence was taken, argument heard, and the cause finally submitted.

[fols. 55-56] On this, the 6 day of October, 1948, it is ordered and decreed that insofar as Sections 455, 456 and 457, 70 O. S. 1941, are sought to be applied and enforced in this particular case, they are unconstitutional and unenforceable.

The court refrains at this time, however, from issuing or granting any injunctive relief, but jurisdiction over the subject matter is reserved for the purpose of entering any

such further orders as may be deemed proper in the circumstances to secure to the plaintiff the redress he seeks under the Constitution and laws of the United States.

Done this 6 day of October, 1948

Alfred P. Murrah, Judge of the U. S. Court of Appeals.
Edgar S. Vaught, U. S. District Judge.
Bower Broadbuss, U. S. District Judge.

[fol. 57]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF PLAINTIFF TO MODIFY ORDER
AND JUDGMENT—Filed October 8, 1948

Now comes the plaintiff, G. W. McLaurin, and moves this Honorable Court for further relief. In support of said motion, plaintiff alleges and states:

1. That on August 1, 1948, plaintiff filed a complaint in the above-entitled cause, requesting that this Court convene a three-judge court, as required by Section 266 of the Judicial Code then in effect, and further requesting that this Court issue both preliminary and permanent injunctions restraining defendant from excluding the plaintiff and others similarly situated from admission to courses of study offered by the state only at the graduate schools of the University of Oklahoma solely because of race or color, such complaint being predicated upon the assertion of the unconstitutionality of Sections 455, 456 and 457 of Title 70 of the Oklahoma Statutes of 1941.

2. That on August 23, 1948, the Honorable Alfred P. Murrah, Justice of the Circuit Court of Appeals for the Tenth Circuit, convened a three-judge court, consisting of the said Mr. Justice Murrah, the Honorable Edgar S. Vaught and the Honorable Bower Broadbuss of the United States District Court for the Western District of Oklahoma.

3. That on the 23 day of August, 1948, this matter came on before said three-judge court for a hearing, upon an agreed statement of facts; and that upon a further hearing held on the 29th day of September, 1948, the Honorable Mae Q. Williamson, Attorney General of the State of Oklahoma, stipulated that:

[fol. 58] "The record may show our admission that his (plaintiff's) credentials have been put in order." (Matter in parenthesis ours)

4. That the said agreed statement of facts adopted by this Court together with the stipulation made in the hearing on September 29, 1948, established that the plaintiff is a resident and citizen of the United States, State of Oklahoma, Oklahoma County and Oklahoma City;

That he was qualified for admission to the Graduate School for the purpose of taking courses in school administration leading to the degree of Doctor of Education;

That the University of Oklahoma is part of the educational system of the State of Oklahoma and is the only institution in the state supported by taxation in which the plaintiff could pursue such a graduate course in education leading to a Doctor's Degree;

That plaintiff had complied with all the rules and regulations and was willing and able to pay all lawful, uniform fees and charges;

That on the 28th day of January, 1948, plaintiff, having complied with all applicable rules and regulations of the University, had applied for admission to the said Graduate School of the University of Oklahoma;

That on the 2nd day of February, 1948, his application was denied solely on the grounds of race and color and that but for the Oklahoma statutes requiring segregation in educational institutions (Sections 455, 456, and 457 of Title 70 of the Oklahoma Statutes, 1948), defendants would not have established and would not be maintaining the order, policy, custom and usage of excluding qualified applicants, solely because of race or color, from attending the University of Oklahoma to take the courses offered at that institution.

5. That after hearing the argument of the parties and upon the pleadings and memoranda in support thereof, this Court, on the 29th day of September, 1948, held as follows:

"Based upon those facts, the court holds that the plaintiff in this case is entitled to secure . . . post-graduate education in this state by a state institution. The court further holds that to this time he has been denied that right although application has been duly made therefor (and) during the same period these particular educational facilities have been afforded by the state to other groups.

[fol. 59] "The court further holds that the state is under the constitutional duty to provide this plaintiff with the education he seeks as soon as it does for applicants of any other group . . . The court further holds that insofar as the statutes of the State of Oklahoma drawn in issue here deny or deprive this plaintiff of admission to the University of Oklahoma for the purpose of pursuing the course he seeks to pursue there, (they) are unconstitutional and void. . . .

"Accordingly, we refrain at this time from issuing or granting injunctive relief on the assumption that the state will follow the law in the constitutional mandate.

"We retain jurisdiction of this case, however, with full power to issue such further orders and decrees as may be deemed necessary and proper to secure this plaintiff the equal protection of the laws, which, translated in the terms of this law suit, means equal facilities—equal educational facilities.

"We therefore recess this case at this time with the understanding that either party may apply for further relief consistently with the pleadings in the case."
(Matter in parenthesis ours)

6. That pursuant to the holding of this Court in said judgment that the plaintiff was entitled to equal education as soon as such education is supplied to members of any other group, plaintiff herein; on the 5th day of October, 1948, made application to the Board of Regents, University of Oklahoma, an administrative board and agency of the State of Oklahoma, exercising over all authority with reference to the regulation of instruction and admission of students in the University and for admission to the graduate school of the University of Oklahoma for the purpose of taking courses in school administration leading towards a Doctor's degree in education.

7. That said defendant, acting together with and upon the instruction of the other defendants herein and each of them, refused and denied the plaintiff admission to such courses in the University of Oklahoma solely on account of his race or color.

8. That the only purpose for the institution of these proceedings in this Court by the plaintiff was to secure

for plaintiff the rights guaranteed to him by the Constitution and laws of the United States and particularly the equal protection clause of the Fourteenth Amendment thereof. Plaintiff, at the time of his application to the University, sought to secure graduate education in the field of education and a Doctor's degree in that field. Plaintiff, in renewing his application on the 5th day of October, 1948, again sought to secure an education leading [fol. 60] to a Doctor's degree at the only state-supported institution providing courses leading to such degree.

9. That white applicants for courses in school administration who applied at or about the time that the plaintiff applied in January 1948 were admitted and have completed one term of work.

10. That white applicants for such courses who applied for the Fall term 1948 have been admitted and entered upon such course of study on September 20, 1948.

11. That qualified white applicants who seek enrollment prior to October 13, 1948 will be admitted to such courses.

12. That on October 1, 1948 plaintiff requested the Board of Regents of the University of Oklahoma to reconsider its rejection of his application for admission in the light of this court's decision, but said defendants persisted in their refusal to admit plaintiff by failing to act upon such request.

13. That this Court has stated that plaintiff is entitled to receive an equal education "as soon as" such education is furnished to white students, and hence the refusal to admit plaintiff for two semesters is a substantial denial of his constitutional rights.

14. That plaintiff has no adequate remedy at law for the redress of this wrong and time is of the essence in securing a redress of such wrong.

WHEREFORE, plaintiff moves this Court to modify its order and judgment of September 29, 1948, and to enter an order requiring the defendants to admit the plaintiff to the Graduate School of the University of Oklahoma for the purpose of taking courses leading to a Doctor's degree in education, subject only to the same rules and regulations which apply to other students in said school.

Amos T. Hall, 107½ N. Greenwood Avenue, Tulsa, Oklahoma; Thurgood Marshall, 20 West 40th Street, New York, New York, Attorneys for Petitioner.

[fol. 61]

IN UNITED STATES DISTRICT COURT

PROCEEDINGS OF OCTOBER 25, 1948

Before Judges Murrah, Vaught & Broadus.

On this 25th day of October, 1948, the parties appear by their respective counsel, and this cause comes on for hearing on motion of plaintiff to modify order of September 29, 1948, motion of defendants to quash subpoenas duces tecum, and hearing on merits. Thereupon, pre-trial hearing is had, evidence heard, and exhibits introduced and facts stipulated; the application of Mauderie Hudson Wilson to intervene is heard, and all matters submitted to the Court for determination. Both parties are granted five days from this date to exchange briefs.

[fol. 62]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 4039 (CIVIL)

G. W. McLAURIN, Plaintiff,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, et al.
Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Nov. 22, 1948

PRELIMINARY STATEMENT

At a former hearing of this cause, we held the segregation laws of the State of Oklahoma (70 O.S. 1941, Sections 455, 456 and 457) unconstitutional and inoperative insofar as they deprived the plaintiff of his constitutional right to

pursue the course of study he sought at the University of Oklahoma. We were careful, however, to confine our decree to the particular facts before us, while recognizing the power of the State to pursue its own social policies regarding segregation in conformity with the equal protection of the laws. We expressly refrained from granting injunctive relief, on the assumption that the State statutory impediments to equal educational facilities having been declared inoperative, the State would provide such facilities in obedience to the constitutional mandate.

Now this cause comes on for further consideration on [fol. 63] complaint of the plaintiff; to the effect that although he has been admitted to the University of Oklahoma, and to the course of study he sought, the segregated conditions under which he was admitted, and is required to pursue his course of study, continue to deprive him of equal educational facilities in conformity with the Fourteenth Amendment.

FINDINGS OF FACT

I

The undisputed evidence is that subsequent to our decree in this case, plaintiff was admitted to the University of Oklahoma, and to the same classes as those pursuing the same courses. He is required, however, to sit at a designated desk in or near a wide opening into the classroom. From this position, he is as near to the instructor as the majority of the other students in the classroom, and he can see and hear the instructor and the other students in the main classroom as well as any other student. His objection to these facilities is that to be thus segregated from the other students so interferes with his powers of concentration as to make study difficult, if not impossible, thereby depriving him of the equal educational facilities. He says in effect that only if he is permitted to choose his seat as any other student, can he have equal educational facilities.

II

He is accorded access to and use of the school library as other students, except if he remains in the library to study, he is required to take his books to a designated desk on the mezzanine floor. All other students who use the library may choose any available seat in the reading room in the library, but a majority find it necessary to study

elsewhere because of a lack of seating capacity in the library. The plaintiff says that this secluded and segregated arrangement tends to set him apart from other students and hence to deprive him of equal facilities.

[fol. 64].

III

He is admitted to the school cafeteria, where he is served the same food as other students, but at a different time and at a designated table. He does not object to the food, the dining facilities, or the hour served; but to the segregated conditions under which he is served.

In the language of his counsel, he complains that "his required isolation from all other students, solely because of the accident of birth * * * creates a mental discomfiture, which makes concentration and study difficult, if not impossible * * *"; that the enforcement of these regulations places upon him "a badge of inferiority which affects his relationship, both to his fellow students, and to his professors."

CONCLUSIONS OF LAW

I

It is said that since the segregation laws have been declared inoperative, the University is without authority to require the plaintiff to attend classes under the segregated conditions. But the authority of the University to impose segregation is of concern to this court only if the exercise of that authority amounts to a deprivation of a federal right. See *Screws v. United States*, 325 U. S. 91.

The Constitution from which this court derives its jurisdiction does not authorize us to obliterate social or racial distinctions which the State has traditionally recognized as a basis for classification for purposes of education and other public ministrations. The Fourteenth Amendment does not abolish distinctions based upon race or color, nor was it intended to enforce social equality between classes and races. *Plessy v. Ferguson*, 163 U. S. 537; *Cummings v. United States*, 175 U. S. 528; *Gung Lum v. Rice*, 275 U. S. 78; *Missouri ex rel Gains v. Canada*, 305 U. S. 37. It is only when such distinctions are made the basis for discrimination and unequal treatment before the law that [fol. 65] the Fourteenth Amendment intervenes. *Traux v.*

Raich, 293 U. S. 33, 42. It is the duty of this court to honor the public policy of the State in matters relating to its internal social affairs quite as much as it is our duty to vindicate the supreme law of the land.

III

The Oklahoma statutes held unenforceable in the previous order of this court have not been stripped of their vitality to express the public policy of the State in respect to matters of social concern. The segregation condemned in *Westminster School District v. Mendez*, 161 F. 2d 774, was found to be "wholly inconsistent" with the public policy of the State of California, while in our case the segregation based upon racial distinctions is in accord with the deeply rooted social policy of the State of Oklahoma.

IV

The plaintiff is now being afforded the same educational facilities as other students at the University of Oklahoma. And, while conceivably the same facilities might be afforded under conditions so odious as to amount to a denial of equal protection of the law, we cannot find any justifiably legal basis for the mental discomfiture which the plaintiff says deprives him of equal educational facilities here. We conclude therefore that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, having its foundation in the public policy of the State, and does not therefore operate to deprive this plaintiff of the equal protection of the laws. The relief he now seeks is accordingly denied.

[fol. 66]

APPLICATION OF MRS. MAUDE FLORENCE HANCOCK WILSON

Mrs. Maude Florence Hancock Wilson, claiming to be a member of the same class and similarly situated with the plaintiff McLaurin, has renewed her application for entrance to the University of Oklahoma to pursue a course of study in social work, and upon being denied entrance, she comes here seeking the same relief sought by McLaurin in his class action.

The facts are that Mrs. Wilson applied for admission to the University of Oklahoma on January 28, 1948, for the purpose of studying for a master's degree in sociology.

She was morally and scholastically qualified to pursue this course of study, and it was unavailable at any separate school within the State of Oklahoma. When her application for entrance was denied, solely because the laws of Oklahoma forbade it, she filed suit in the District Court of Cleveland County, Oklahoma, in May 1948, for a writ of mandamus to compel her admission on substantially the same grounds now asserted here. Having been denied relief in the District Court, she has perfected her appeal to the Supreme Court of Oklahoma, and that appeal is now pending and undecided. She did not renew her application for admission to the University until October 14, 1948, two days after registration was closed to any applicant for any course of study at the University.

Having elected to pursue an equally adequate remedy in the courts of the State for the purpose of securing equal protection of the laws, and is now actively pursuing that remedy, she is not similarly situated with the plaintiff, McLaurin. Moreover, the course of study she now seeks to pursue is not the same as the one originally sought, and [fol. 67] not having applied for admission until all other persons would have been similarly denied admission, she is not within the class for which this suit is prosecuted. The relief sought by her is, therefore, denied.

(S.) Alfred P. Murrah, Edgar S. Vaught, Bower Broadus.

[fol. 68]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 4039 (CIVIL)

G. W. McLAURIN, Plaintiff.

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, et al.
Defendants.

JOURNAL ENTRY OF JUDGMENT—Nov. 22, 1948

Be it remembered that this cause came on for further consideration on the 25th day of October 1948. The plaintiff, McLaurin, appeared in person and by his counsel,

Thurgood Marshall and Amos T. Hall. The applicant, Mauderie Florence Hancock Wilson, appeared in Person and by the same counsel of record. The defendants appeared either in person or by and through the Attorney General of the State of Oklahoma, the Honorable Mac Q. Williamson, and Assistant Attorneys General Fred Hansen and George T. Montgomery. Testimony was heard, and the case was finally submitted on briefs of the parties.

Upon consideration of the evidence, argument and briefs, it is ordered that the relief now sought by the Plaintiff McLaurin should be and the same is hereby denied.

It is further ordered that the relief prayed by the applicant Wilson should be and the same is hereby denied, and the complaint is dismissed.

Alfred P. Murrah, Edgar S. Vaught, Bower Broadus.

[fol. 69]

IN UNITED STATES DISTRICT COURT
AMENDMENT OF JOURNAL ENTRY

Upon suggestion of counsel for the plaintiffs, the last paragraph of the order entered on November 22, 1948, is hereby amended to read as follows:

It is further ordered that the relief prayed for by the applicant, Wilson, should be and the same is thereby denied. The complaint as to each of the parties is dismissed and judgment is entered for the defendants.

Alfred P. Murrah, Edgar S. Vaught, Bower Broadus.

[fol. 70] [Stamp:] Filed January 10, 1949. Theodore M. Filson, Clerk, by D. Lucille Leslie, Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 4039 (Civil).

G. W. McLaurin, Plaintiff

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, BOARD
OF REGENTS OF UNIVERSITY OF OKLAHOMA, George L. Cross,
Lawrence H. Snyder and J. E. Fellows, Defendants

Reporter's Transcript of Trial Proceedings

Before:

THE HONORABLE ALFRED P. MUREAH,
Judge of the United States Court of Appeals;

THE HONORABLE EDGAR S. VAUGHT,
United States District Judge for the Western
District of Oklahoma;

THE HONORABLE BOWER BROADDUS,
United States District Judge for the Northern,
Eastern and Western Districts of Oklahoma.

REPORTER'S TRANSCRIPT OF HEARING ON MOTION TO MODIFY
JUDGMENT

In the United States Court House and Post
Office Building, Oklahoma City, Oklahoma.

October 25, 1948

APPEARANCES:

For the Plaintiff:

AMOS T. HALL,
107½ North Greenwood,
Tulsa, Oklahoma.

THURGOOD MARSHALL,
20 West 40th Street,
New York, New York.

[fol. 71]

For the Defendants:

MAC Q. WILLIAMSON, Attorney General,
State of Oklahoma,
State Capitol Building,
Oklahoma City, Oklahoma.

FRED HANSEN, Assistant Attorney General,
State Capitol Building,
Oklahoma City, Oklahoma.

GEORGE T. MONTGOMERY, Assistant Attorney General,
State Capitol Building,
Oklahoma City, Oklahoma.

[fol. 72]

PROCEEDINGS

October 25, 1948.

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Murrah: Are the parties ready in No. 4039 Civil, McLaurin versus Oklahoma State Regents?

Mr. Williamson: The State is ready.

Mr. Marshall: We are both ready, sir.

Judge Murrah: Now the Court understands that this case comes on for hearing this morning on the plaintiff's application to modify its order of September 29 to require the defendant to admit the plaintiff to the Graduate School of the University of Oklahoma for the purpose of taking courses leading to a Doctor's Degree in Education, subject to the same rules and regulations which apply to other students in the said schools, is that correct?

Mr. Williamson: May it please the Court, that is the main motion or the main order of business, but I think the Court should be advised that in pursuance, I take it, that procedure, counsel for plaintiff caused to be issued subpoenas duces tecum directed to the Secretary of the Regents for Higher Education and the Secretary of the Regents of Oklahoma University, which subpoenas were properly issued and served, and which demanded each of those respective officers to bring all and entire the minutes of those two organizations for the past three years before this Court.

[fol. 73] Now when we learned of that we filed in this Court for reasons which will be more or less obvious, a Motion to Quash this subpoena duces tecum, and we believe that in the orderly process of things that should be taken up first, in order that we may see whether or not all of the records pertaining to every bit of the State's business handled by two constitutional boards, should be brought here in this case at this time, for the past three years.

Judge Murrah: We will reach that immediately, but you agree, Mr. Counsel, that is the issue, the primary issue, the Motion to Modify?

Mr. Marshall: There is another issue, sir. We do believe that, and I think in all fairness we should make our position clear: It is our understanding throughout the two hearings in this case that this was a proceeding for class, which was limited to those who had applied and who had been refused, and this being a class action, in reference to the prayer for further relief, we have just been advised that one of the people who expected to go to school, Mrs. Mauderie Hancock Wilson has, according to a ruling of the Attorney General, been excluded, and in view of the fact that this is a class action and that she is clearly within the class as determined by the Court, and as I remember at the first hearing with the full agreement of the Attorney General, I do believe that we are entitled in this case to also [fol. 74] consider the facts as to the reason for her being excluded, which is a further reason, I submit, sir, for the request for further affirmative relief so everybody in the class will be protected.

Judge Murrah: You desire to enlarge your pleading, amend the pleadings before us at this time?

Mr. Marshall: To be perfectly frank, I think it could be handled in one of several ways. One is that she could request to intervene, the other that she could file a petition in the form of a petition for further relief, all of which would take time. There is also the question that her particular case is pending over, having been decided by a State court. It is now a question as to whether it will be appealed or not. All of which questions, it seems to me, just add up to a question of time to be consumed, and in this case we believe that if affirmative relief which we pray for is issued in the McLaurin case as such, it will apply to

her. That is the reason we didn't want to take any of these other proceedings, because of the matter of time involved.

Judge Murrah: But the Court inquired whether or not you cared to enlarge your pleadings to ask for further relief.

Mr. Marshall: The only question as to the pleadings, sir, if it isn't necessary for an extension of time to give the other side a time to answer. We would be perfectly [fol. 75] willing to go as we are because time is of the essence, and we believe that if we request for permission to amend, that the other side might have, I don't know, sir, on a petition for further relief, as to whether the other side would have a right to answer. Frankly, I don't know the answer to that.

Judge Murrah: Mr. Attorney General, could you enlighten us on that point?

Mr. Williamson: I believe technically under the rules, at least as I understand it, we would; but I want to assure the Court that there is no disposition on our part to take unnecessary time away from reaching the issues as they appear in this series of litigation. We have never yet prayed for time and we shan't begin it now. I do believe that in an orderly pleading, I would suggest that if counsel for plaintiff here wishes to include Mauderie Wilson within the scope of this litigation, I believe her name ought to appear by way of amendment to the pleadings. I think it would be very irregular and unusual for us to take it up without something in the pleadings indicating that she has now arrived as one of the parties in this lawsuit. I have no disposition to delay unduly. I would only ask for such time as would be a reasonable time under the circumstances, perhaps none at all.

Judge Murrah: Thank you. We will reach that when we get to it. Meanwhile, we have the more immediate issue [fol. 76] relating to the named plaintiff. Now what is the issue specifically with respect to the plaintiff McLaurin? Certainly his position is a little bit different than anyone else in this way, that he has—of course the Court doesn't live in a vacuum, and we understand that certain events have transpired since this Motion was made and I would like for you to make a statement at this time concerning the issues involved at the present time.

Mr. Marshall: May it please the Court, as I understand the issue at the present time, the plaintiff G. W. McLaurin has been admitted to the University of Oklahoma to the courses he requested. There is no question but that he is getting the courses that he asked for.

However, as I understand the position, judging from copying of minutes that I have been privileged to see of the Board of Regents of the University of Oklahoma which will be produced, the opinions of the Attorney General of the State of Oklahoma, it has been agreed that the segregation statutes, the three statutes involved, do not apply to this case, having been declared unconstitutional as applied to McLaurin, that the officials, under the advice of the Attorney General, have admitted him without reliance upon these statutes. However that pursuant to an alleged inherent power of the Board of Regents as such, the Board of Regents without a statute requiring them to do so, have [fol. 77] undertaken the task of placing McLaurin in an anteroom outside of the regular classroom.

Judge Vaught: Now just a moment. When did this Court say that the segregation statutes were void?

Mr. Marshall: The ruling, sir, as I remember the journal entry, was that as applied to McLaurin, they were void.

Judge Vaught: In so far as his admission to the State University was concerned. This Court has never held that they were void or that they were unconstitutional. They held that they were unconstitutional in so far as it precluded McLaurin from being admitted to the University, since there were no other facilities equal to that provided otherwise.

Mr. Marshall: Yes, sir. If I may say, sir, the paragraph says that it is ordered and decreed that in so far as Sections 455, 456 and 457 are sought to be applied and enforced in this particular case, they are unconstitutional and unenforceable, sir—on the last page of the journal entry.

Judge Vaught: That has to do merely with his admission to the University.

Judge Murrah: We will construe our judgment in the light of the facts which have transpired. Now let me suggest that you tell us your position in the case, what you expect to prove.

Mr. Marshall: What we expect, sir, is that, if I [fol. 78] may make just one preliminary statement as of

the present time, and the factual situation as it exists. Now the defendants cannot be enforcing these statutes because these statutes say—it is unlawful to teach a white and colored student in the same school. There is no question that he is in the same school, but as I understand it, the position is now taken that under the inherent power of the Board of Regents, in the absence of statute, he is being segregated and we are prepared to put on evidence to show one, that the effect of that upon the plaintiff himself in regard to whether or not he is getting an equal education, and two, that there is one point of law on which there is no dispute, there is no law on the other side in the Federal and State courts, that in the absence of a State statute requiring segregation, no administrative board can set up segregation in public schools, and it is our position that the Board of Regents, the defendants in this case, not having a State statute requiring segregation, cannot on their own inherent power segregate in any fashion.

So that we have two points, one is that they cannot segregate in the absence of statute; and two, that this segregation itself deprives this plaintiff of getting what we started out for him to get, which is an equal education, and that is why in the petition for further relief we ask that further relief be granted, which is the only type of [fol. 79] relief which will give him what he is entitled to, that is an education subject only to the same rules and regulations.

Judge Vaught: What is it that you want? Just put it in plain English. What is it that you want?

Mr. Marshall: We wanted McLaurin admitted just like any other student, take his seat in the same way as any other student.

Judge Vaught: In other words, you want him in the same room with the other students.

Mr. Marshall: Why, yes, sir. That is the only way he can get an equal education. That is our point.

Judge Murrah: Very well. That defines the issue. Now I think it is appropriate to take up your Motion to Quash the subpoenās.

Now, cannot we have an agreement between the parties here that this plaintiff has been admitted to the University of Oklahoma on the date on which he was admitted, to

pursue the courses he sought to pursue there, and that conditions under which he was admitted, that is the physical conditions or the actual conditions.

Mr. Marshall: If your Honor please, I would prefer to develop that by testimony if possible. We have the plaintiff here and we propose—

Judge Murrah: (Interposing) I want you to make a statement about it. We don't want to take any testimony. [fol. 80] unless it is necessary.

Mr. Marshall: I think he was admitted, I think it was on October 13, and that he was permitted to pick the courses he wanted to pick, and that he was carried to a room, placed behind a desk, and it was either an anteroom or another room from the main classroom, subsequent to that day, as I remember it, sir, the balance of the class was moved down to that room, and since that time he has been permitted to stay there on those conditions.

Judge Murrah: Well now, state where, the Court must have the picture there and I feel you ought to be able to state it as well as your witness can.

Mr. Marshall: I can state it, sir, that it is Room 103 and Room 104, one of the regular classrooms. The other is an anteroom that has been used for a small library with an area for opening between the two rooms, and the class is in the large classroom, and McLaurin's desk is on an angle in the other room, nothing separating them in the area in the door there, and that is where McLaurin sits.

Judge Murrah: He can see the instructor?

Mr. Marshall: Yes, sir, he can see the instructor, he can see practically every student. He can hear the instructor and he can hear the other students. We have pictures by commercial photographers which will show the exact setup, taken from four or five different angles.

[fol. 81] Judge Murrah: Would you produce them? Do you wish to put them in evidence?

Mr. Marshall: Yes, sir.

Judge Murrah: Have them identified and submit them to the Attorney General.

Mr. Attorney General, is there an instructor here or someone who knows exactly what conditions are, or do you know?

Mr. Williamson: I wouldn't know, your Honor.

Judge Murrah: Anyone here who does?

Mr. Williamson: Yes, sir, we have the President of the University. We have Dr. Fellows.

Judge Murrah: Dr. Wrinkle would know. Dr. Wrinkle, would you examine these photographs and see if it can be agreed that they fairly represent the physical conditions under which this plaintiff is attending the University of Oklahoma and the classes in question.

Mr. Counsel, you agree or do you agree—I am not asking you to admit anything that you do not wish to or that might be prejudicial—but do you agree that the physical conditions under which this plaintiff is admitted are equal to the physical conditions under which the other students attend the class?

Mr. Marshall: No, sir, because of the fact that he is not in the classroom itself, and by being placed outside [fol. 82] there is a certain pressure on him of being excluded, which is not conducive to the person's ability, and there are other situations, I might say, about his library, his eating facilities and all which I hope to develop.

Judge Murrah: I see.

Mr. Williamson: I would like to state to the Court that counsel for the defendant has examined the five photographs showing the classrooms where the plaintiff herein is attending school and showing particularly his desk room and his seat in the classroom, and we agree that these pictures portray, are fairly representative of the situation as it exists there in the Education Building.

Judge Murrah: Mr. Counsel, will you ask him to mark that so they can be admitted in evidence.

(Five photographs of classroom were marked Plaintiff's Exhibits 1, 2, 3, 4 and 5 for identification and received in evidence.)

Mr. Williamson: I might state further to the Court that it is entirely appropriate if somebody would interpret them for the Court to indicate which seat is the plaintiff's.

Judge Murrah: All right.

Mr. Williamson: It will be difficult to pick it out otherwise.

Judge Vaught: Let us look at it and if we need any interpretation we will ask for it.

[fol. S3] Judge Murrah: Now Mr. Counsel, will you please proceed with your proof, that is, with your statement.

Mr. Marshall: All right, sir.

Judge Murrah: I think we should say to you, perhaps we haven't made ourselves clear, it is the settled policy of the Court of this jurisdiction to attempt to secure agreements as to proof about which there is no dispute to avoid the time and taking testimony. We call that pre trial procedure in this jurisdiction, followed uniformly, and our purpose here is just to define our area of agreement, and of course that means that we are not going to require the production of any documentary evidence if it can be agreed upon.

Mr. Marshall: I understand, sir. Thank you.

Judge Murrah: Now you may proceed at your pleasure just to state what you expect to prove for the record, and the Attorney General will state whether or not he can agree to it, and if not what part he cannot agree to, and we will thereby be enabled to define the issues upon which there must be proof.

Mr. Marshall: If your Honor please, we expect to produce evidence to show: One, the exact conditions under which the plaintiff is studying, from the plaintiff himself, as to the classroom, library and dining facilities. We expect to show by that proof—

Judge Murrah: (Interposing) The pictures depict, [fol. S4] I suppose you agree that they depict the actual conditions under which he attends the class.

Mr. Marshall: Up to the present time they are accurate, sir.

Judge Murrah: What is your next point about that? That is the classroom. There is some point about the dining facilities.

Mr. Marshall: We will wish to show that in the library he is stuck up behind a stack of books on, I think the 7th floor. The other graduate students have a regular Graduate Study Hall. That requires him to come downstairs, apply for his books, pick them up, go back upstairs and into his little place.

Judge Murrah: Will you state those circumstances, just state them, will you please.

Mr. Marshall: As I understand, he has been set aside a space behind the stacks on the 7th floor, and that is his study

place for library purposes, and if he needs a book he has to come down and get the book at the regular place where all the students get their books, carry it back up into the library, his little place up in the library, to study.

Judge Murrah: The same library?

Mr. Marshall: The same library, same building.

Judge Murrah: Used by the other students?

[fol. 85] Mr. Marshall: Used by the other students. There is a private room for graduate students.

Judge Murrah: In other words, there is a place set apart for him to pursue his studies in the library, and in order to do that it is necessary for him to leave this place and go down or up?

Mr. Marshall: Go down.

Judge Murrah: Go down to the library, get his books and bring them back to this place and use them there at this designated or what we would call segregated place.

Mr. Marshall: That's the point.

Judge Murrah: Do you have knowledge of that, Mr. Attorney General?

Mr. Williamson: Not personally but I have here and can produce testimony.

Judge Murrah: Can you agree that those are the facts?

Mr. Williamson: I can't at all. In the first place I didn't know we had a seven-story library at Norman.

Mr. Marshall: I am not sure of that.

Mr. Williamson: I am not, either. I just don't think we do.

Judge Murrah: All we are trying to do—Judge Broadbuss has to be in another jurisdiction tomorrow, supposed to be, and we are all exceedingly busy, Judge Vaught recessed [fol. 86] his court for this—what we would like to do is to handle this case as expeditiously as possible. We do not wish to prejudice anyone in the presentation of evidence, and we shall not, but we hope and we think that you ought to be able to agree upon these facts.

Mr. Marshall: With one exception, sir. I would prefer to have the plaintiff—he is the only one who can testify what this does to him. I can't. It just won't take over fifteen minutes.

Judge Murrah: All right. Wait a moment, just a moment.

Mr. Williamson: I might say to the Court and for the record after conferring with Dr. Wrinkle, who is Chairman of the Interim Committee on this particular field of education, Dr. Wrinkle who is personally advised and is a member of the faculty of the University of Oklahoma, tells me that we have a library building now down there consisting of a basement and two floors, in other words three floors, counting the basement; that the main desk where control is exercised over the library, where someone in authority sits, is on the street floor of the library, and that there is another floor, the second floor of the library above that, and that it is on the second floor of the library where the plaintiff, McLaurin's desk is placed; that they have a series of landings, a stairway with landings, and that there [fol. 87] may be six or seven landings in order to approach the desk on the second floor; that the desk is probably actually located above the permanent second floor on a landing up above the floor itself, but that it is not even as high as the third floor because there is no third floor. Therefore his desk is on the second floor or perhaps slightly elevated above it, and that he would have to go the equivalent of one ordinary full flight of stairs from the second floor down to the main floor in order to make his record on books that he wants.

Judge Vaught: Do other students use the second floor also?

Mr. Williamson: I might say that the students generally—the Court of course knows there are many thousands of them—they do go in and roam over the building and take their books. They can take them anywhere they can find a place to sit down. They sit down and study. They do not have the advantage of an individual desk, thousands of them there. They take the books and retire from the building and across the campus and take them to their homes, thousands of them, because they don't have desks in the room. That privilege is accorded to all students to withdraw books from the library because the library couldn't hold six or eight thousand students, and there are some eleven thousand plus on the campus.

Judge Murrah: Let me see if I cannot state for [fol. 88] the parties substantially the facts developed up to this point: That it is agreed that the plaintiff McLaurin was on the blank day of October—

Mr. Williamson: 13th.

Judge Murrah: The 13th of October admitted to the University of Oklahoma and to the courses which he sought to pursue in his application to the University proper officials on January 28, 1948, that he was admitted to the same classes that other students pursuing these courses, under the same instructors, and that he was assigned a permanent desk or chair in an anteroom to the main classroom where other students were seated, that the Exhibits 1 to 5, which have been introduced into evidence, fairly represent the physical conditions under which he was admitted, and where he now sits and now pursues his course of study.

It is further admitted that he can from this position see the instructor and hear the lecture, that he can see all or most of his fellow students, and that he is not obstructed in listening to the lecture or pursuing his course, except under conditions which may be hereinafter discussed.

Mr. Marshall: Yes, sir.

Judge Murrah: Now it is further agreed that he is admitted to the library at the University of Oklahoma where all other students are admitted and on the same conditions, except that he is assigned a permanent desk on [fol. 89] the landing above the second floor of the library, and that he is required by the administrative rules to occupy this desk while using the library, and in so doing he is required to leave his desk, go to the librarian, I suppose, and get the books he wishes, take them to this desk and use them there; while other students pursuing the same courses and using this library, go into the library, select the books they wish and take them home or any place that they may wish to pursue their studies.

Gentlemen, is that about right?

Mr. Williamson: That is about right as far as we are concerned except I wish to call the Court's attention to the fact that the Court made the statement in dictating this agreed statement that this plaintiff is seated in an anteroom. We think he is seated in what had been an anteroom, all obstruction is removed.

Judge Murrah: Very well.

Mr. Williamson: We could agree to it if the Court please, with that change.

Judge Murrah: Well, take out the word "anteroom" and just say "adjoining room".

Mr. Williamson: Well, if the Court please, the idea of rooms—psychologically when you talk about an adjoining room you think about a wall between them, and I think that is really a bit unfair to the defendant because there is no [fol. 90] wall there.

Mr. Marshall: If your Honor please, there is a wall there.

Judge Vaughn: It is an alcove.

Mr. Williamson: There is no obstruction to vision in the world. The photographs speak for themselves. It is a part of the same room after certain adjustments were made down there.

Judge Murrah: It is agreed that these exhibits depict conditions under which he is seated and under which he pursues his course of study there?

Mr. Williamson: That has been admitted and is agreed.

Judge Murrah: Now is that satisfactory?

Mr. Marshall: Yes, sir.

Judge Murrah: Now then, very well, will you state any other conditions to which you object, such as I believe you stated something about dining facilities.

Mr. Marshall: The dining facilities, sir, would have to be developed, I think, by the plaintiff.

Judge Murrah: Can't you make a statement about that?

Mr. Marshall: The only statement I could make on it is that he is assigned to a place in what is known as the "Jug" which is an eating place on the campus, a regular [fol. 91] eating place where he eats by himself, and I might say, sir, that is the reason I would rather have him to explain it, because of the effect that that has on him, I think can only be explained by him because it is outside of the regular classroom work.

Judge Murrah: Well now, of course from a practical standpoint we may as well face the issues. It is perfectly apparent from what has been said here up to this point, that this plaintiff has been admitted to the University of Oklahoma for the purpose of pursuing the same course of studies, under the same instructors, attending the same classes, under segregated conditions.

Mr. Marshall: Yes, sir.

Judge Murrah: And that is the point that you wish to assail here in this lawsuit.

Mr. Marshall: Yes, sir.

Judge Murrah: The sooner we develop those points and crystallize the issues here, the quicker we will all be out. Can't you make a statement about it? Of course the only alternative we would have would be to take testimony, but we hope that it will not be necessary to do that because we realize that if we get started introducing testimony here, that we will be here a great length of time, more than should be necessary to try this lawsuit.

Mr. Marshall: The only testimony we have, sir, on that point, is the plaintiff, to tell in a brief statement, [fol. 92] which will not take more than ten or fifteen minutes; and the other thing I think we can stipulate is that under the present existing situation at the University of Oklahoma, all other students, regardless of racial background or national origin or creed, are admitted freely without segregation of any kind and that the only group segregated in the University of Oklahoma at the present time is this plaintiff and all other Negroes who will apply.

Judge Murrah: I think that is perfectly apparent.

Judge Vaught: That is a State statute, isn't it?

Mr. Marshall: They are doing it, sir, as I understand it, in the absence of the statute.

Judge Vaught: Now that "Jug" you speak about—that's a restaurant?

Mr. Marshall: That's a restaurant. The name "Jug" is just a name. There is nothing about its being not a decent place.

Judge Vaught: White students are accommodated there, too?

Mr. Marshall: Yes, sir, so far as we know, sir, but not at the time. It won't take over a few minutes.

Judge Murrah: Well, we want to make sure. I hope it will not be necessary to cover ground that we have already covered.

Mr. Marshall: No, sir, I am not going into the [fol. 93] background at all.

G. W. McLAURIN

the plaintiff, called as a witness by the plaintiff, was duly sworn and testified as follows:

Direct Examination.

By Mr. Marshall:

Q. Mr. McLaurin, you are the plaintiff in this case?

A. Yes, sir, that's right.

Q. Do you remember on October 13, is that correct, you were admitted to the University of Oklahoma?

A. That's right.

Q. Will you state briefly the circumstances after your classes were arranged and you were placed in the room that you now use as your classroom.

A. Those pictures describe the room in which I was placed adjoining the main classroom, and sometimes I would sit by the wall and there would be just an opening and of course it is necessary for me to look with a greater angle than anyone else to see the west side of the blackboard and so forth, and quite strange and humiliating to be placed out in that position, and it handicaps me in doing effective work, always conscious of something, bring about unnatural conditions and so forth. It is really handicapping me. Sometimes I can't concentrate my mind on work as I should.

Q. Now Mr. McLaurin, you have touched on it, but [fol. 94]. I wonder if you would give to the Court in your own words the exact effect, good or bad, upon you of being in this anteroom or as you have described it, the room just connected with the regular classroom, limited to the question of you getting the education you want. That is the only thing that this Court is interested in.

A. Well, it hinders me from doing effective work as I have desired to do. That handicaps me and why of course I can't study and concentrate like I would want to do. Of course if I was just, you know, free without any handicaps to take a seat in the regular classroom where I wouldn't be conscious of anything else but got my mind right on my work.

Q. Realizing, Mr. McLaurin, you are hearing the same professor and hearing the same students, and getting the same instruction from the professor, why is it that you make the statement in your last answer, that still you are impeded in getting the education you desire?

A. I don't quite catch your point.

Q. Just why is it that you cannot concentrate, I think is the word you used, just why?

A. Well, just different, just like now suppose that was the class over there, and then I am a member of the class sitting up here, so to speak, then you would have quite an effect on me, brings about a feeling that it is something

irregular that I can't sit in the classes, which makes me [fol. 95] conscious that something out of the ordinary or something out of the way where I can't sit in the class just like the other ones, brings about that consciousness and so forth.

Q. Does that have any effect on your studying, in your ability to take in what the professor is giving?

A. Absolutely does.

Q. How does it?

A. Keeps me from taking in the knowledge that I should because those conditions will hinder me from learning and grasping things as fast as I should.

Q. Now Mr. McLaurin, the library facilities that are offered to you, just where is the space that is assigned to you?

A. I go by floors and stacks, but you know when I go up there, I press the fourth button of the elevator and it says the fourth floor, fourth stack, something and supposed, required to have a special desk up there, and close to, I guess about half a carload of newspapers, old ones and so forth. I guess about two or three feet from me all those old newspapers, and of course I am required to remain at that desk and study and when I want to get books, I think it is on the second or third floor, I am not permitted to sit in the main study hall down there and study.

Q. Mr. McLaurin, is this space where you are assigned, is that a room or just what kind of a place is it?

A. Well, it is a place where they call the stacks, and my [fol. 96] desk being in front of the stacks, you know where they keep the books and so forth and not a regular study hall. Of course students come up and want to take notes, something like that, you might say, a few notes and go back, but that is my regular place where I must carry my books back and remain there and study them there except when I go to take them down.

Q. You can't stay when you go down to check out a book?

A. Check out a book and go up behind the stacks.

Q. That is your only place assigned to you?

A. If I want to go in and study, why then I have to go up behind the, behind the stacks and study, whether I am looking up anything back up there or not, that is my regular place.

Cross Examination.

By Mr. Williamson:

Q. You entered school on the 13th of October?

A. That's right.

Q. Moved into your place in the classroom. It is in the classroom, isn't it?

A. Well, it's a double room, not in the regular classroom, this wall is between my room and the regular classroom. Of course it's an opening just large enough for a large double door, maybe about as large an opening as one of those double doors.

Q. As distinguished from a peek hole, it is just a [fol. 97] removable whole wall, isn't it, in front of you?

A. How's that now?

Q. There is no wall in front of you in between you and the class and instructor, there is no wall there?

A. Well, it is, I mean it's a wall in front and a wall in the rear of the building. Of course my desk is placed close to the door there.

Q. You don't mean to tell the Court there is a wall in front of where you sit?

A. I mean it is a door there between two walls, it is a door there, an opening to the class, and then I don't mean I am sitting behind a wall. There is a wall between me and the class, and something like that double door. You see the door is in about the middle of the wall there, I guess something like that.

Q. You have seen these pictures that have been introduced in evidence, have you not?

Judge Murrah: That is a point I don't think we can enlarge upon or that the plaintiff could make the picture plainer than the picture itself.

Mr. Marshall: We agree that those do represent the conditions under which he is attending classes.

By Mr. Williamson:

Q. I'd like to ask one question with reference to the library facilities. Now you have a desk there and you say it [fol. 98] is behind some newspapers.

A. I said stack of newspapers, not behind, close to it, I suppose a carload, something like that, old newspapers.

Q. Are you acquainted with the fact that there are eleven thousand students attending Oklahoma University and that

you are the only one that has the privilege of a desk in the library building, is that true?

A. Naturally I was under the impression that advanced students working on a Doctor's Degree, that they always receive a special desk in the Graduate Department. That's the way I was under the impression.

Q. All right, I will ask you this question: Do any of the other students, advanced students who are attending graduate work leading to a Doctor's Degree in Education, do any of them have desks in the library?

A. Well, now, I haven't checked on that. I am up there by myself and of course I haven't had a chance to go in and see.

Q. You mean nobody ever comes up there?

A. How's that?

Q. You say nobody ever comes up?

A. Some of the boys come up and check out books and go back down.

Q. You tell the Court that you do not have the privilege of browsing through the book shelves?

A. I am not in the shelves, I mean down in the main library.

[fol. 99] Q. I am talking about browsing through the shelves, in the books on the shelves, you have that privilege, do you not?

A. I get the books, I mean the study hall where I have to get the books and have to go back.

Q. How many times have you been in the library since the 13th of October.

A. Well, I didn't check them, been there several times.

Mr. Williamson: I believe that's all.

Judge Murrah: Is this place that you speak of a part of the library?

The Witness: I don't know whether or not they are arranged so that they could be used. I guess maybe people just kept their old books or something like that.

Judge Murrah: Do you wish to develop any further points?

Mr. Marshall: No, sir, not with this witness, sir. That's all, Mr. McLaurin.

Judge Vaught: One question. This restaurant, now you can get your meals down there at regular hours?

The Witness: Well, it's an arrangement.

Judge Vaught: Just answer the question, can you get your meals there at regular hours?

The Witness: I can.

Judge Vaught: And you get the same food that is provided other students as far as you know?

[fol. 100] The Witness: Well, I couldn't tell because I haven't been in there when they are served. I couldn't tell just whether I get the same service or not but then I know I am assigned a special place. I am the only one in there, and of course I do not have my meals served on the cafeteria order, where they go right around and make his own selection. Why of course it is that I just have to take what is brought me, that's all.

Judge Vaught: That's a cafeteria, isn't it? What is it?

The Witness: That's a cafeteria. I am not served on a cafeteria order.

Judge Vaught: But this is a regular cafeteria?

The Witness: Well, I don't think it is because it's got an ad out there, doesn't say—called the "Jug."

Judge Vaught: Well, the "Jug" is the same as the "Copper Kettle," isn't it?

The Witness: Well, that's the particular name for this place.

Judge Vaught: All right.

Judge Murrah: That's all.

(Witness withdraws.)

Colloquy between Court and Counsel.

Mr. Marshall: May it please the Court, did we agree with the Attorney General about the stipulation that everybody else, under the present ruling of the University, [fol. 101] the only group that is excluded from general participation in everything are Negroes, the only group that is segregated are Negroes?

Mr. Williamson: I don't know about general participation in everything. Of course we can't agree to that because I know one or two Jewish organizations down there, when you talk of everything, that gentiles can't participate in.

Mr. Marshall: I am not interested in that sort of thing. I am perfectly glad to limit it to that question.

Mr. Williamson: Let's limit that.

Mr. Marshall: That the only group of citizens attending the University of Oklahoma who are segregated are Negroes.

Mr. Williamson: Segregated, yes, to the extent shown here in the record.

Mr. Marshall: Are Negroes.

Mr. Williamson: Yes.

Judge Murrah: That seems to be fair and it is so agreed, then, gentlemen.

Mr. Marshall: If your Honor pleases, that's all in so far as the McLaurin case, with the exception of the letters from the Attorney General to the Board of Regents, the Minutes of the Board of Regents.

Judge Murrah: Very well.

[fol. 102] Mr. Marshall: I would like to have those in evidence.

Judge Murrah: Do you have them, Mr. Attorney General?

Mr. Williamson: We are certainly in possession of them. I presume. Now comes on the necessity of a constitutional board bringing in the Minutes for the past three years, covering every conceivable official activity, but I don't understand you have asked for that.

Mr. Marshall: I asked for everything, every Minute of the Board of Education, the Board of Higher Regents from October 1st, I think it is, to the present time, and every opinion of the Attorney General during the same period of time.

Judge Murrah: I think, Mr. Counsel, without consulting my associates, that the Court would not be disposed to require them to produce every Minute and every Opinion. I think that is entirely too general. If you will be specific.

Mr. Marshall: On this subject matter, I beg pardon—I meant on this subject matter.

Judge Murrah: Now I think you should be a little more specific than that if you can and limit your question to what dates. Are you familiar with them?

Mr. Marshall: I am familiar.

[fol. 103] Judge Murrah: You are familiar with every Minute and every Opinion that you wish to put in evidence, aren't you?

Mr. Marshall: Yes, sir.

Judge Murrah: Why don't you take them up, sir, one at a time?

Mr. Marshall: I think, sir, we can agree if you will give us a few minutes.

Judge Murrah: I am sure we can. I haven't any doubt that you can. Now would you like to have a recess or can you—

Mr. Marshall: I think we can do it in five minutes.

Mr. Williamson: I would like to say to the Court we originally handed copies of our Opinions as they are issued to Mr. Hall because Thurgood Marshall has been in another state. Amos Hall, I think, will say that we have.

Judge Murrah: Do you have them now?

Mr. Williamson: Do you have them in possession, Mr. Marshall?

Mr. Marshall: No, sir, the only one that I don't have is the Minutes of the meeting of October 10th.

Judge Murrah: Do you have all the rest of them?

Mr. Marshall: I have the ruling.

Judge Murrah: Why don't you offer them?

Mr. Marshall: They are copies.

[fol. 104] Judge Murrah: If they handed them to you they are authentic and they are entitled to be admitted if otherwise material.

(A short recess was taken with the Court on the bench.)

AFTER RECESS

Judge Murrah: Now in order that we may understand each other as we go along, the Court is of the opinion, we don't want to render judgment before it's submitted to us, but in connection with these records of which you speak, we think it perfectly competent to show the action of the Board of Regents in respect to the matters involved, but we doubt very seriously if it is competent to show its deliberations.

Mr. Marshall: No, sir. May I suggest, if the Court please, the Attorney General has had prepared photostats of the Minutes concerning this particular one.

Judge Murrah: Very good, sir.

Mr. Marshall: I was about to make the suggestion, sir, that the whole thing that they have there, which are photostats, be placed in so that either side can use what portion they want, if there is any question ever comes in your Honor's mind about it, it will be here, but no question of the authenticity of them and that they be in there for that purpose.

[fol. 105] Judge Murrah: The Court does not wish to encumber this record with matters that are not material.

Mr. Marshall: Yes, sir.

Judge Murrah: It is perfectly all right for them to be made available so long as it does not encumber the record.

Mr. Marshall: There are only two pages in the one that we want in the record, and what has taken place since the judgment of the Court, and let the other just sit there in case.

Judge Murrah: That is a matter for you to decide.

Mr. Williamson: There are some fifteen or twenty pages here and we had them photostated, it's true, but it seems to me like that the record ought not to be encumbered with the entire fifteen or twenty pages consisting of telegrams and opinions the Court knows about.

Judge Vaught: Can't you agree and stipulate what the action of the Board was?

Mr. Williamson: I rather think we can. We have it boiled down. Where is that here? I think it is really the essence of the lawsuit.

Judge Murrah: Take your time, Mr. Marshall and see if that does not epitomize the facts you wish to present.

Mr. Marshall: This is all right for the 10th, this is October 10th, but if your Honor pleases, the October 6th [fol. 106] meeting, the Board decided at that meeting not to admit McLaurin.

Judge Murrah: You wish that for the record?

Mr. Marshall: I want that in the record.

Judge Murrah: Does the Attorney General agree, then, that those are the actual notes of the Board at that meeting?

Mr. Williamson: Yes, this was very relevant and we will admit it is in the Minutes, I think we can find it in a minute here.

Judge Murrah: It's been agreed now at the October 6th meeting of the Regents, the Board of Regents of the University of Oklahoma declined to admit this plaintiff to the University. That's all you seek to prove, isn't it?

Mr. Marshall: Yes, sir.

Mr. Williamson: At that time.

Judge Murrah: At that time. Now let's proceed to the next step. What's the next step?

Mr. Marshall: The next, sir, that we want is a copy of the letter from the Attorney General to, I mean this Resolu-

tion here—excuse me, which is an excerpt from the Minutes of the special meeting of the Regents of the University of Oklahoma held on Sunday, October 10, 1948, sir.

Judge Murrah: It is admitted, you agree to it?

[fol. 107] Mr. Williamson: I agree that it reflects the action of the Board held on that date.

Judge Murrah: It is admitted in evidence.

(Copy of an excerpt from the Minutes of a special meeting of the Board of Regents of the University of Oklahoma held October 10, 1948, marked Plaintiff's Exhibit No. 6 for identification, was received in evidence.)

Mr. Marshall: There is another letter from the Attorney General to President Cross, October 6, concerning the McLaurin case.

Mr. Williamson: We have furnished them two copies.

Judge Murrah: Do you wish that admitted in evidence?

Mr. Marshall: We would like to have that in evidence.

Judge Murrah: Any objection? It is admitted in evidence.

(Copy of letter from the Attorney General of Oklahoma to G. L. Cross, President, University of Oklahoma, dated October 6, 1948, marked Plaintiff's Exhibit No. 7 for identification, was received in evidence.)

Judge Murrah: What is your further pleasure?

Mr. Williamson: I'd say to the Court and to counsel that one of the final statements in this October Opinion is that we refer to an Opinion that our office, the Attorney General, gave to Governor Turner as of October 2 and enclosed a copy. Now we have no objection to a copy of the Turner letter. I don't know how relevant it is but that is referred [fol. 108] to in the October 6 Opinion, a copy was attached.

Mr. Marshall: I have no objection to it.

Judge Murrah: If you don't want it, it's not a question of what anyone else; it's what you want.

Mr. Marshall: I don't need it. I don't object to it. The other letters of the Attorney General of October concerning Mrs. Mauderie Hancock Wilson.

Judge Murrah: Can't you lay that aside for the present? Let's deal with Mr. McLaurin, the plaintiff McLaurin.

Mr. Marshall: I think, sir, that's all we have.

Judge Murrah: That's all the Minutes of the record that you deem pertinent to this particular inquiry?

Does the Attorney General wish to supplement this proof in any way?

Mr. Williamson: I have nothing to offer, your Honor, except that I would like to make about a two-line supplement in the form of testimony of Dr. Cross, to the effect that the "Jug" is a pet name for a luncheon room which is a part of the Student Union Building at Norman, where the same food is served in the various dining rooms. It is just merely one of a series of dining rooms on the floor above the cafeteria, I think, there.

Judge Murrah: Which is maintained by the University?

Mr. Williamson: Maintained by the University. They have a menu to select from, whereas eleven thousand or [fol. 109] more, more or less who desire to eat, have to line up and wait in line. A person in the "Jug" sits, is approached by a waiter, his order is taken, and his food brought to him.

Judge Murrah: It's been agreed.

Mr. Marshall: Of course we agree to it. The only point Mr. McLaurin was making was that he was there at a time all by himself.

Judge Murrah: He doesn't dispute those facts.

Mr. Marshall: I don't think so. He only knows what happens when he is there, he doesn't know what happens the other times, so we don't wish to question Dr. Cross at all, sir.

Judge Murrah: The Attorney General's statement is treated as if the testimony of Dr. Cross had been presented and is considered part of the evidence in this case as such.

Now what's your further pleasure, gentlemen, on the facts?

Mr. Williamson: Defendant rests.

Judge Murrah: Very well.

Mr. Marshall: We rest.

COLLOQUY RE STATUS

ADDITIONAL PARTY

Judge Murrah: Now we come to what might be termed the supplemental matter of the question of another party who claims to be a member of the class represented by this plaintiff, would that be correct?

Mr. Marshall: That is it exactly, sir.

[fol. 110] Judge Murrah: You may proceed as you wish in that respect. Perhaps you would wish to make a short statement.

Mr. Marshall: The statement I would like to make, sir, is that as I understand this being a class action, the relief granted in the case can be used by any member of the class, that there is no question that Miss Wilson is a member of the class, and I think that the Attorney General will agree that she did apply back in January, approximately the same time as Mr. McLaurin, and that the officials of the University of Oklahoma agreed that she is qualified in all respects except that she is a Negro.

The issues involved in her case are exactly the same as his case. There is therefore no question but that she is in the class, which was agreed upon, as I understand it, at the first hearing between the Court, the Attorney General—and this said—that the class was limited to that group but that it did apply to everyone in that group; that for that reason we were unable to proceed as to Miss Wilson as much because she has not been definitely refused.

I assumed that after the decision of this case, that all of these applications were standing more or less together, but the Attorney General as of October 22, there is no question about that, did rule that the University was not required to accept her at this time, and for that reason it is a further reason for us asking for affirmative relief. [fol. 111] because if this Court does issue affirmative relief it most certainly will apply to Miss Wilson as a member of the class. If she wants any further affirmative relief she will of course have to come in court and apply for it, but if an injunction is issued it would apply to the policy, custom and usage of excluding all members of this class, and she is a member of the class.

That is our position. I don't think we need any testimony. I don't think any one of the factual statements I have made will be disputed, and that, sir, is our position at this time as to Miss Wilson.

Judge Murrah: What does the Attorney General say?

Mr. Williamson: May it please the Court, I must differ with my friend and counsel across the table on the statement that the Wilson case is on all fours with the McLaurin case. You have an entirely different situation. On the McLaurin case itself this Court said "as to this particular

case." It is needless to go further in reminding this Court of its language. The McLaurin case decided the facts and circumstances in the McLaurin case, and we are now about to try another lawsuit, and may I say incidentally, so far without any pleadings, but here is the situation in the Hancock Wilson case: There were five or six of those people, three of them saw fit to file State court actions in mandamus [fol. 112] in the District Court of Cleveland County. One of them was dismissed, that action was McLaurin, and came for relief to this court. The other two actions are pending, including Mrs. Hancock Wilson.

Mrs. Hancock Wilson pursued her remedy in the State court and was met with a decision of the trial court at Norman denying her the mandamus. She ordered the record and appeal is now in process, and she has a full grown lawsuit on these various issues, pending in the State court at this time.

Judge Murrah: Wilson?

Mr. Williamson: Wilson, yes. It's not been dismissed. The situation is entirely different. She is battling on another legal front this good minute, while coming in here and informally so far asking for relief here. I don't say that is a violation of law, and I am just telling the Court about it.

Now it's different to this extent also: That while battling on that front, pursuing the remedy in that lawsuit, she comes down to Norman on the 14th of October, in the face of the fact that the University of Oklahoma has a standardized rule, printed and published in the Summer of 1948, saying to the world and to all who are interested, that on and after October 13, 1948, all enrollment privileges cease. That is a rule of the University. The University Board of Regents caused that rule to be passed, and they are a constitutional body and entrusted by the Constitution of this State with the full government of that institution, and that is one of their rules; on the 13th of October the curtain falls on all further enrollment activities, and in my opinion of the 22nd, and capable of being produced as testimony and as true, Dr. Cross tells me in a letter that since the 13th of October, 1948 no person, black, white, brown or yellow, has enrolled in the University of Oklahoma for any cause whatsoever, and that will be in the record when my October 22 Opinion will be read.

Now that is a situation where there is a vast difference between someone coming in after the curtain falls and in addition may I say to the Court that this applicant on the 14th, having come in later than anyone—the last person who substituted and asked for and is receiving instruction in sociology applied on September 18 and classes began on September 20—and this person comes in on the 14th of October and changes, without any warning or notice to the University, changes entirely her application for admission and strikes out the course in social work and enters up a course in sociology on the 14th of December after the gate has dropped and without notice to the University.

Judge Murrah: 14th of October.

Mr. Williamson: 14th of October, and initialed the change and went through all that procedure of changing [fol. 114] her course without notice, without warning, entirely different instructors, entirely different course of study, some of the subjects overlap.

Now on those particulars, on coming in after every and any university student has been in and at work, after this rule has been invoked and has taken effect as of the 13th, coming in on the 14th—that is the main point of difference between the two, that and the pursuance of legal remedies in another forum.

Judge Vaught: Now Mr. Attorney General—

Mr. Williamson: Yes.

Judge Vaught: I may have misunderstood you. When she applied in January, for what course did she apply?

Mr. Williamson: For the course in social work, or for graduate instruction leading to a degree in social work.

Judge Vaught: What you say is when she came in on the 14th of October, why she applied for an entirely different course.

Mr. Williamson: Took a pen and struck out "social work" on the afternoon of October 14, and inserted the word "sociology," an entirely different course, and then initialed it with her own initials on her application.

Judge Vaught: Is that recognized as a separate course in the University?

Mr. Williamson: It is. Some of the hours of instruction interlap; but it is a separate course, separate hours in the main.

Judge Murrah: You have made your position, Mr. Attorney General. The Court thinks that the first matter to be considered is whether or not the relief you seek is within the pleadings.

Mr. Marshall: Yes, sir.

Judge Murrah: And within the scope of the relief granted by this Court in its judgment.

You have made yourself clear on that point, that is, as I understand it, you say that this suit was brought as a class action, and that the plaintiff McLaurin is representative of the class of which this party, Wilson, is a member; being similarly situated she is entitled to the same relief. That is about right, isn't it?

Mr. Marshall: Yes, sir.

Judge Murrah: May it be agreed, or can it be agreed, that the statements on the part of the counsel for Wilson are the true facts and may be treated as received in evidence, and that the statement on the part of the Attorney General with respect to the position of the State, so far as it states the facts, are true and may be considered as part of the evidence.

Mr. Williamson: I see no objection to it.

Judge Murrah: Instead of suggesting that they are [fol. 116] true—that those will be the evidence in the case.

Mr. Williamson: We have no objection to that.

Mr. Marshall: Also the letters of the Attorney General.

Judge Murrah: Yes, and you of course want to introduce the litigation, such pertinent parts of the State court litigation, I assume, in support of your statement.

Mr. Williamson: I want, of course; in the record it to be noted that State litigation.

Judge Murrah: You have so stated, and if the parties agree, that will be taken as evidence.

Mr. Williamson: It is now pending.

Judge Murrah: I do not know whether this court would be aided by a more particular statement or more particular evidence of the litigation.

Mr. Williamson: As to the issues in the State litigation.

Judge Murrah: Yes. The issues there and the progress of the litigation. We deem it quite important, I think that to consider, whether or not this plaintiff's rights are being litigated in the State court. That being true we would certainly be most reluctant to interfere to grant any relief for that reason alone.

Mr. Marshall: I know that line of cases along that line, sir, and the question is that there are two ways, [fol. 117] of course, to meet it: One is to drop the State court case prior to final litigation, but on the other hand that is a law action, mandamus. Here we have an equity action and this court having taken over jurisdiction of the subject matter, that in this type of case this court for that reason is entitled to cover the subject matter of the case, which is the small group of six people that is involved in it, and for that reason only I believe that having taken jurisdiction of this particular subject matter that the court should retain jurisdiction until complete relief is given for the entire class.

Judge Murrah: The Court appreciates your position in that respect, but you also must admit that this court, sitting as a court of equity, should so fashion its decree with respect to the subject matter as to grant the relief and at the same time have it sufficiently flexible to accord to the State processes the dignity that they are entitled to.

Mr. Marshall: I think so, sir, but I might say if this point is to be decided, it cannot be decided on the narrow issue of McLaurin. I think that if this Court, I think that the Court's declaratory judgment was enough for the defendants in this case to understand what the law is, not as to McLaurin but as to all Negroes who stay in that category, and that having failed to do so in the McLaurin case, it seems to me that that [fol. 118] is a basis for our coming again to the court and saying that the declaratory judgment is not enough, we have to have clearer, more affirmative relief so that the officials of the University of Oklahoma, those who want to follow the law, will have the protection of this court, so that they can take Miss Wilson or anybody else who happens to fall in this peculiar category; and that is the reason that I believe Miss Wilson's case is a part of this action any way it's looked at, because it would be strange for the University officials to say that here are two people in almost the same position, and when we say "yes" to one, to the other we say "no."

I don't think this thing about October 14 — my mind that she applied in January, she didn't apply in October.

Judge Vaughn: If she applied for one course in January, now if she applies for another course in October —

Mr. Marshall: I think any student, sir, is entitled to change courses.

Judge Vaught: Well, of course she would be bound by the regulations in effect.

Mr. Marshall: There is no regulation that says you cannot change courses in the University of Oklahoma.

Judge Vaught: I don't know. I am just assuming that there is.

Mr. Marshall: To my mind the same rule applies in equity, that is the clean hands doctrine, and the only reason [fol. 119] that she was not in school on October 13th was that the defendants hadn't admitted her, and furthermore she was there on October 13 and in the presence of her counsel, who was there, I think, to try to keep them from pulling that type of thing.

Judge Vaught: Don't use the word "pulling that type of thing." This is a legal matter.

Mr. Marshall: Sir, I say quite seriously that we are dealing with fundamental rights, and to say that the mere fact that a person applies through a lawyer who says that she is ready to come, can she come, on the 13th, sir, then on the 14th she goes herself, and I do say, sir, I do use the word, the technicality that she goes one day late—

Judge Vaught: (Interposing) If she knew the printed regulations provide that the entrance would be to the 13th and none thereafter, why did she not comply with that?

Mr. Marshall: The reason she didn't comply, sir, is because she sent her lawyer to find out whether she was wasting her time in coming out there; and the law doesn't require anybody to do a vain act. The onus was placed on the defendants in January and this court has so held that they were wrong in not admitting her in January, and they kept her out from January until now, and then they come in the court room and say that she hasn't complied. She met all the lawful requirements and the only reason she [fol. 120] wasn't admitted was because of the rulings which have been declared invalid in this particular case as to McLaurin, so I think they are precluded from coming in and saying that she did not apply in time. She applied away ahead of time.

Mr. Williamson: I might make one observation. The January application was, as the court well remembers, without any notice, and without any warning. That whole

matter was presented to the Court. The January application resulted in a temporary turndown, so that she knew and felt the necessity of applying again, and did apply again, because of the fact that she realized and recognized that her first application had been denied, and she came on the 14th personally and applied.

Judge Murrah: Now Mr. Counsel—

Mr. Marshall: Yes, sir.

Judge Murrah: Treating this matter as a class action, which it is, and the plaintiff as the representative of that class, it is incumbent upon you, of course, fundamental, to show that any other party claiming to be a member of that class is similarly situated.

Mr. Marshall: Yes, sir.

Judge Murrah: Now have you done so?

Mr. Marshall: In this case, we will say the case is similarly situated. It was limited to the group who had applied, who were qualified and who had applied, and who had [fol. 121] been refused.

Judge Murrah: Now you have done so to your satisfaction?

Mr. Marshall: I think, sir, that we have shown that Miss Wilson—

Judge Murrah: That is the point I inquired about. I wanted to give you an opportunity to meet that issue and to advise you that, of course, you must do that before the Court could consider it at all.

Mr. Marshall: I agree, sir. It is my understanding that in the stipulation we agreed to in open court, it was to the effect that Miss Wilson was qualified in all respects other than race for admission when she applied in January of this year, and she was refused admission to the Graduate School solely because of her race or color pursuant to the statutes 455, 456 and 457, and for that reason she stood in the same position as McLaurin and stood in the class of qualified applicants who had applied who had been refused solely because of race or color in around about the same time.

Judge Murrah: Is it a fact that plaintiff McLaurin as of January 28, and sometime in September we will say made further application to the University officials for admission?

Mr. Marshall: Made application.

Judge Murrah: The real issue—I am not sure about that—but wasn't the real issue before us when we rendered [fol. 122] our judgment in this case, whether or not your plaintiff McLaurin, having made application for admission in January of '48 and again having made application in September sometime?

Mr. Marshall: Yes, sir.

Judge Murrah: I am not sure about that date, I am merely trying to illustrate the point, that the question remains whether it was not incumbent upon any other member of this class who claims to be similarly situated, to have made application to the proper authorities and submitted their credits and credentials during the enrollment period before September 23 or October 13 as the case might be. I don't know which is the critical date. The point I am trying to illustrate or call your attention to is, she must be in all respects similarly situated before you can have the prerequisites to seeking the relief we have granted your plaintiff McLaurin.

Mr. Marshall: I think so, but she did not reapply in September.

Judge Murrah: Now she did not, and conceding that, conceding that she did not reapply, put it this way, Mr. Reporter: Conceding that she did apply on January 28, 1948, that she was denied, tentatively denied admittance February 2, 1948, but did not thereafter pursue her application for admission until October 14, 1948; meanwhile plaintiff McLaurin reapplied to the University—while I don't [fol. 123] know the date, I know he reapplied and that date was pleaded and was material and was in the original hearing, because the reason it was, if you will recall at least one of the members of the Court expressed the view that in order to have a collision of issues, it was necessary for him to make normal application for admission in the University. I know I entertained that view, and when we met to render the final decision in this case, or that is the interlocutory decision, it was again stipulated that he had made application or an application was unnecessary, I believe that was, for him.

Mr. Marshall: Yes, if your Honor pleases.

Judge Murrah: The point is certainly in the case.

Mr. Marshall: I take this position and I have taken it all along, that especially in an equity case, whoever sets

up the chain of circumstances which create harm, I don't think that particular person can rely on anything in that chain of circumstances—I think under normal circumstances and not matters of evidence but as a matter of what actually happens when an application is made and not followed through, the student does not renew the application. The application sets in the files and it can be reactivated by just a letter, telephone call or anything. It can be reactivated but it is an old application that carries on through unless there has been a change in the rule, as to the type of application that is to be filed. Now the wrongdoing in this case [fol. 124] was the result solely of the defendants. They didn't let her in.

Judge Vaught: Could they have let her in legally in January?

Mr. Marshall: I think so, your Honor.

Judge Vaught: I don't think they could. There was a State statute. The Board of Regents has no power to declare an Act unconstitutional and before McLaurin was admitted it was necessary that there be either a decree of a court or a repeal by the legislative body before an administrative body could take action. They couldn't ignore the law. That was in a statute.

Mr. Marshall: All right, sir, I agree with that, but it does not change the position, I don't think, sir. My position is now either that the State of Oklahoma by statute or the defendant by administrative action denied to this plaintiff, or rather Miss Wilson, the protection of the Federal Constitution back in January of '48.

Judge Vaught: But that wouldn't be a matter that an administrative body could determine. It would be necessary either for the Legislature to repeal these laws, or for some court of competent jurisdiction by decree to hold them unconstitutional.

Mr. Marshall: So the statutes deprive Miss Wilson of her education.

Judge Vaught: Yes, sir.

[fol. 125] Mr. Marshall: State of Oklahoma.

Judge Vaught: Yes, sir.

Mr. Marshall: Now the State of Oklahoma, this time speaking through the Attorney General and the defendants, the Board of Regents, say that because of the fact that our State statutes deprived you of admission to the University

of Oklahoma back in January, you have to reapply in October, when she has done what any other students did. All the other students are in. They didn't have to reapply. This is not a normal situation that can be compared with the ordinary.

Judge Vaught: There was no occasion for the other application, but when she applied, under the laws of this state, neither the Board of Regents nor the faculty of the University of Oklahoma, could have permitted her to enter.

Mr. Marshall: Yes, sir.

Judge Vaught: There is a law against it, a statute. Well, an administrative body can't ignore State law. They have no power to declare it unconstitutional. They couldn't even go far enough to say that it conflicts with the Constitution of the United States. It is a matter either for a legislative body or for a court before they would have the power to admit. Now in the McLaurin case our reason for holding that he was entitled to equal educational facilities, was because our Constitution said so, and the laws of the State said so, and the Supreme Court of the United States [fol. 126] said so, but the State comes in and then admits we have no other place where equal facilities can be provided.

Mr. Marshall: Yes, sir.

Judge Vaught: So in that case, this court under that state of facts held that in so far as McLaurin was denied the right to enter the University, since there was no other place where he could acquire this education, that the segregation laws, so far as he was concerned in this particular case, were null and void, and unconstitutional, and that is as far as this court has gone.

Mr. Marshall: I think this court did recognize in the first hearing that this was a class action and it would apply to the group.

Judge Murrah: Conceding that, and this is the point about which I wish to inquire—conceding that this suit was brought as a class action and prosecuted as such, and that all persons similarly situated are entitled to the same relief, that is your contention?

Mr. Marshall: Yes, sir.

Judge Murrah: And you contend Miss Wilson—I don't know, I can't recall the full name, is, if similarly situated, entitled to the same relief that we have granted and which

you ask and for further relief you ask for the plaintiff McLaurin. When was her suit filed in the State court?

[fol. 127] Mr. Marshall: June.

Judge Murrah: June of '48?

Mr. Marshall: Yes, sir.

Judge Murrah: And what relief did she seek?

Mr. Marshall: Mandamus in the District Court in Norman.

Judge Murrah: And she sought to mandamus the State authorities to admit her?

Mr. Marshall: Yes, sir.

Judge Murrah: To the course for which she made application on January 28, 1948?

Mr. Marshall: Yes, sir.

Judge Murrah: And on the ground asserted there, I assume, that the statutes which forbade her admission were unconstitutional and void?

Mr. Marshall: Yes, sir.

Judge Murrah: And they never had any right under the law to deny her admission?

Mr. Marshall: I might say this, sir, there was quite a bit of dispute as to whether or not the statutes were correctly—

Judge Murrah: (Interposing) You sought to compel her admission and on the ground she had a constitutional right?

Mr. Marshall: Statutes notwithstanding, your Honor.

[fol. 128] Judge Murrah: To pursue the course of study, the statutes to the contrary notwithstanding. Now the question in my mind and one which I must decide, is whether conceding, as you say, that this is a class action, and that all parties similarly situated are entitled to like relief, whether a party who makes application on January 28, 1948 for admission to pursue a course of study in the University of Oklahoma, which is not offered elsewhere in the State, and having been denied that admission tentatively on February 2, 1948, thereafter in June, 1948 brought an action in the State court to compel her admission on the ground that the State had no constitutional right to deprive her of admission to the course of study, and thereafter while pursuing that remedy in the State court refrain from making further application or further pursuing her application for admission, while at the same time the plaintiff McLaurin was relying solely upon the processes of this court for relief.

That is apparently as the facts are, whether she now stands in the same position, whether she is similarly situated, seems to me to be, as far as I am concerned, the paramount question, the dominant question in this case, the one that it is certainly incumbent upon you to show. We can't assume that she is similarly situated simply because she made application in January.

Mr. Marshall: I agree.

[fol. 129] Judge Murrah: I think the proof is conceded, of course, that she made application in January, 1948 and was denied in February. Now that is as far as the similarity goes except that she is still qualified.

Mr. Marshall: And that as I understand it, she has reapplied not later than October 14.

Judge Murrah: Yes, sir, reapplied for admission and denied, and then back to court and now in this court claiming relief in a class action, while admitting at the same time she has been pursuing the same remedy or substantially the same remedy in another forum with jurisdiction, with concurrent jurisdiction to grant relief.

Mr. Marshall: Judge Murrah, I was trying to leave that point to the last. That's tough.

Judge Murrah: Well, eventually we will have to get to it.

Mr. Marshall: That's tough. As I understand it, if this were a brand new action that she was filing, that is if I may for a minute forget about the State court.

Judge Murrah: Proceed as you wish.

Mr. Marshall: She reapplied on the 14th and came into this court and asked for an injunction to restrain them from holding her out, I think then we are up against a very real proposition.

Judge Murrah: Yes, sir.

[fol. 130] Mr. Marshall: Where this court has already said that State statute cannot deprive a person of equal protection, it seems to me that if a State statute falls, any rule and regulation of a university could fall also, and that unless it could be shown that it was a crime or something to admit a student one day late, I am accepting the Attorney General's point that she was one day late, recognize that she has already applied back in January, and she comes in one day late and because of that reason, credence is given to the rule and regulation of a school, when as a matter of fact statutes have been declared unconstitutional, applied

to my mind in an equity court, I think that an equity court has the power to even go so far as to ignore that rule, and I think that one day, neither wrecks nor helps any school for anybody.

Judge Vaught: Suppose, as has been stated here, that no one, no other students of any color were or would have been admitted after the 13th. Would you say that she didn't have equal privileges then with others?

Mr. Marshall: No, sir, she didn't have equal privileges because there are no other students in her category. There is no other student that was held out from January.

Judge Murrah: I fully appreciate that, Mr. Counsel.
[fol. 131] Mr. Marshall: But now it comes to the point whether—you see, it's not a question of comity, but as the courts have said, it is a question of law.

Judge Murrah: And if it is compelling law, it certainly will be a question of comity, and requiring a Federal equity court to stay its hand. It's been the policy of this court and must be the policy of this court to act only when all other processes have failed, and in that connection, be sensitive of those repeated admonishings down through the years so we not usurp vested jurisdiction of a State court, if we were to grant relief when she is seeking it in a State tribunal charged with responsibility equal with this court of interpreting and applying the constitutional laws of the United States.

Mr. Marshall: I think, sir, that—well, I think I can go this far, sir: That this is not only the law but I agree with it, and the only thing I said is what I said in the beginning, that if she were to come in here herself at this time, no question but that you pick your forum and you stay there until you exhaust your remedies—the only thing I am saying is that we have here a decision by this court which applies to McLaurin, who happened to pick this procedure, and we have other members of the class in the State court, and it was for that reason and that reason only of this court having once taken jurisdiction over the subject [fol. 132] matter and giving complete relief, that is the only exception, sir, that we claim, and we are not quarreling with the law on the other side.

Judge Murrah: We will hear you further at one-thirty.

Might the Court, let the Court suggest that the State court proceedings are certainly pertinent to consideration of the issues in this case, and not only the time of filing but the relief sought there, and the status of litigation there is pertinent. If you have that, if it is available, the Court would greatly appreciate it if you would tender it in evidence.

Mr. Williamson: On that point, your Honor, I confess I didn't know how far we were going to proceed in this.

Judge Murrah: That's all right.

Mr. Williamson: That is another lawsuit to us because it's pending in the State court. A case made was served on us some two or three weeks ago and the latter is lodged in the Supreme Court now. I didn't—

Mr. Marshall: (Interposing) It isn't lodged there.

Mr. Williamson: It is about to be, I will put it that way, will be.

Judge Murrah: No criticism of the Attorney General. You have been very diligent, no doubt about that.

[fol. 133] Mr. Williamson: I really think the matter is of sufficient importance that in all fairness we should have a day or two perhaps to file here with this court exhibits constituting the applicable portions of record in that case.

Judge Murrah: May I interrupt, Mr. Attorney General, the nature of the case has been stated. If that is the nature of the case, if those dates mentioned here on that record are correct, the Court doesn't need the actual exhibits of the pleadings.

Mr. Williamson: I misunderstood the Court. I thought the Court just now said that the Court did wish to be advised in detail about the case. I misunderstood you.

Judge Murrah: I did say that, surely did, but what I mean to say, sir, is if we are sufficiently advised as to the details, the case may be submitted, and we will render our decision forthwith.

Mr. Marshall: If your Honor pleases, any statement that the Attorney General makes about the case as it is pending we most certainly agree with it, sir, because we were in the case, and I mean we both understand exactly what it is, and if he will just make a statement or whatever your Honor agrees, we will agree with whatever he says.

Judge Murrah: We are not going to make the case for you. It is not our province to do so. If you are satisfied with

[fol. 134] the proof, both of you are satisfied with it, the Court certainly is.

Mr. Williamson: We are quite satisfied with the proof. It is just simply a case in mandamus where the decision went against her in the trial in the trial court, and she is appealing to the Supreme Court.

If your Honor please, may I interrupt just to this extent: There are two gentlemen here who are under subpoenas to bring all the records for the last three years of these Boards. May they be released?

Mr. Marshall: I am very sorry I didn't think about it before.

Judge Murrah: That's all right. Witnesses are excused from further attendance on this court. Any other witnesses subpoenaed here? All witnesses under agreement and all witnesses who have been subpoenaed to testify in these proceedings are excused from further attendance.

Judge Vaught: Let me ask you, did you gentlemen desire to orally argue this case or do you want to submit a brief?

Mr. Williamson: I would much prefer to submit briefs. We have rather tried to hurry each other and tried to get through the case.

Judge Murrah: If you wish to argue it, we think that perhaps we will give a full opportunity to argue the case orally, and we shall endeavor to arrive at a conclusion forth-[fol. 135] with, because the matter of course is very familiar to us, and we have studied it. It is just your pleasure.

Mr. Marshall: If your Honor pleases, I made my position clear in the beginning, and I don't know about the Attorney General, but if I could have just five minutes to cite one case, that will be all the argument I would want.

Judge Murrah: You may proceed not only five minutes but thirty minutes if you wish.

Mr. Marshall: No, sir, not thirty minutes.

If your Honor pleases, I think that it is clear that the issue in this case has narrowed down, as to the McLaurin case, is narrowed down to the question as to whether or not the Board of Regents of the University of Oklahoma, in the absence of any State statutes specifically requiring segregation of the races, has inherent power to segregate. I think the only issue left in the case, and the law on that case is summed up in—if I can get it, the Westminster School

District vs. Mendez. It's a Ninth Circuit Case in 161 Federal 2d 774, decided last year.

Judge Vaught: What page number?

Mr. Marshall: 774, sir.

Judge Murrah: 161?

Mr. Marshall: 161 2d. It's a question of segregation of Mexican children in California, and the defendant school board put up several defenses. One was language [fol. 136] difficulties, that the Mexican children all spoke Spanish, but it developed in the trial in the lower court, that the real question was the segregation of Mexicans because they were Mexicans. There were some side issues in the case as to treaties between Mexico and the United States, which always come up in these Mexican cases, but the basic issues in the Circuit Court of Appeals was narrowed to the point that in the absence of a statute requiring segregation, that the particular school board did not have authority to segregate, that such segregation was in violation of the Fourteenth Amendment. It is not new law. There are cases, some are cited in the case itself and there are others, Ward versus Flood, a California case.

Judge Vaught: It's their contention we don't contend that isn't the law.

Mr. Marshall: Well, sir, if that be the facts, then the State has no right to segregate McLaurin.

Judge Vaught: Where we differ is that your contention is that there are no segregation laws in Oklahoma.

Mr. Marshall: That apply to the University.

Judge Vaught: Yes, sir. We, this court hasn't held that. This court has held that the laws of Oklahoma, the State not having provided equal facilities anywhere else, do not prevent the admission of this man to the University, since that's the only place he can get it.

[fol. 137] Mr. Marshall: If your Honor pleases, the statute ruled on makes it a crime to teach white and colored pupils in the same school. That is what the statute says. It is no qualification of that statute. He is being taught in the same school, so that statute cannot apply.

Judge Vaught: That is the part that was held was void as far as it applied to him.

Mr. Marshall: The only other statute in the State of Oklahoma that requires segregation is a provision of the Oklahoma Constitution which applies to public schools and

has been construed several times as not applying to universities, not in Oklahoma but in other states, as not applying to universities, and the school, the Board of Regents of the University of Oklahoma, the letters from the Attorney General, make it clear, which are in evidence, are operating on the inherent authority of that Board to set up segregation, and that these cases all say that in the absence of State statute, the Board does not have the right to segregate.

The other point is that—

Judge Murrah: (Interposing) Before you leave that, what about the provision of the Constitution of the State?

Mr. Marshall: It says public schools, and there are cases, if your Honor is interested, that I can get.

Judge Murrah: I am not interested except that [fol. 138] thought occurred to me. It hasn't been mentioned anywhere either in our Judgment or in argument here.

Mr. Marshall: This litigation has been going on, not this particular case, I don't know, sir, but I think the Attorney General, we agreed away back, that that statute did not apply to universities.

Judge Murrah: That is, this provision in the Constitution.

Mr. Marshall: It means public schools and does not mean universities. There are now cases in other states, and the question first came up in v. University of Maryland. That is the first case that came up, and it's been on the fringes of each one of these cases, and there has been no question that in the absence of a specific statement including "universities"—the only statutes that I know of in the State of Oklahoma are those which are now being, the schools are now operating under.

Judge Murrah: A State constitutional inhibition has no application to these facts?

Mr. Marshall: No, sir, and that the State criminal statutes have no application, obviously. They say that it is a crime to teach in the same school, being no statute, they are acting on their own inherent authority, which they don't have.

Judge Murrah: I think that does not quite answer [fol. 139] the question as far as we are concerned. Conceding now that they have no inherent authority as you state to administratively segregate, that would be what we

are dealing with, the question yet remains whether or not it is of concern to this court.

Mr. Marshall: Well, sir, the Westminster case is the first case that passed on that point.

Judge Murrah: I will certainly be interested to know, and my mind is open on the matter, but this is the question, it seems to me—which is undecided in my mind—and that is, conceding the lack of authority to segregate, how it is our concern unless the action amounts to a deprivation of equal protection of the law. We don't supervise the University of Oklahoma. We don't supervise the State action, unless this State action constitutes an infraction of the equal protection of the law. Now I may say to myself, "Well, they of course have no right to do that, they are doing things that I am satisfied are unauthorized under State law," but I am sitting here as a court, the Federal court, and I don't dip my finger into it unless there is a collision with the Federal law of which I am the judge.

Mr. Marshall: I am mistaken about the Westminster case. There is a lower District Court case in Texas that was issued about June of this year on the Mexican question, so that those are the only Federal cases.

Judge Murrah: What is that case?

[fol. 140] Mr. Marshall: I will have to get it, sir.

Judge Murrah: What did the Ninth Circuit say?

Mr. Marshall: The last part of this opinion is to my mind the important part. It cites all of the segregation cases, Plessy v. Ferguson and all of those, and then points out, "In the first place we are aware of no authority justifying any segregation fiat by an administrative or executive decree, as every case cited to us is based upon legislative act. The segregation in this case is without legislative support and comes into fatal collision with the legislation of the State," talking about the other side.

Then they proceed to hold that it is a violation of the Fourteenth Amendment, and they use the Screws case and a number of others in this special concurring opinion. That goes back and takes in the Snowden case and the Screws case, but it definitely declared it a violation of the Fourteenth Amendment. The position that we take on these is that classification, when examined under the Fourteenth Amendment, unless based—and there is no dispute on those cases—unless based on a rational basis connected

with the purpose of the classification, violates the Fourteenth Amendment. However, all of those cases show that the plaintiff, the complaining party, actually has lost something that you can put your hand on, as a result of that classification. We take the position as to the McLaurin case [fol. 141] that McLaurin is losing something, what he is particularly losing is by being put in a situation of being a leper, or something wrong with him to exclude him from a room. It interferes with his ability to study. It would interfere with mine or I think it would interfere with anybody's. That takes something away from him.

Therefore the Court has a right to look at the classification, and these defendants have not put on one piece of testimony to show a basis for that classification. No theory has been produced to this Court, evidence or otherwise, justifying this classification, so it stands as a classification without justification. It is a racial classification which both the Chief Justice and Mr. Justice Murphy here in a case say that classifications on the basis of race are odious. Of course they were speaking there of the Fifth Amendment, Japanese cases from California. There were about three of them, and at the same time it was repeated in there that they were odious, that is, these racial distinctions, and we think in this case that so far as I am concerned it is the first time that, the true result of segregation laws is apparent. You take one person. You don't put him in with a whole lot of other people, you don't segregate that group from another group and not put any bad opinion on either group—that's not true in this case. Here we take one man and put him on the outside and let him peep in from the outside, that the purpose of that segregation is not to [fol. 142] maintain separation of the races, the purpose of segregation is to humiliate him. To humiliate, maybe is not enough for a court to pass upon, but when the humiliation is coupled up with a frame of mind that will prevent that man from getting the same thing that everybody else gets, it most certainly is the type of classification that comes within the regular classification cases in the 14th Amendment.

Judge Murrah: In other words, to epitomize your argument, it is to the effect that the segregation as shown by these facts is humiliating and so odious and so humiliating

as to deprive him of the equal protection of the law or equal facilities.

Mr. Marshall: Yes, sir.

Judge Murrah: Or equal facilities, which in turn deprive him of equal protection of the law.

Mr. Marshall: Yes, sir.

Judge Murrah: Gentlemen, do you wish to add something at this time, or would you prefer to brief the matter, what is your pleasure about it?

Mr. Williamson: I should like to do a little of both, if your Honor please. I'd like to make about two oral observations, and at the conclusion of which I would pray the Court for a day or two or a few days to brief. Now I would like to refer for a moment to our book here, jointly used. Frankly, I will say to the Court that I personally haven't [fol. 143] read this case but my associate has during the little interim here, and I desire to point out to the Court that this case—

Judge Murrah: Had you seen the authority until today?

Mr. Williamson: I had not seen it today, but Mr. Hansen during the moments he had available, has checked into it and we find that, and call the Court's attention to the fact, that this of course is a construction of the statutory law of California and constitutional law of California, upon a situation, a factual situation entirely different from the McLaurin case in this: That in California they sought to segregate the Mexican, and they segregated the Mexican children not by giving them benches in the same classroom listening to the same professors, visiting in the interior between classes with the other students not at all—they put them way over in another building and at another location, different students, different hours, perhaps, of study, a complete physical segregation.

There is no such thing in the McLaurin case. It is just vastly different. Construction of California laws.

One other observation; I am sure the Court will take cognizance and I'd like, of course, permission to recite in my brief, to call the Court's attention to the Oklahoma case of Rheam versus Board of Regents, where the Supreme Court of Oklahoma has laid down the law that the Board [fol. 144] of Regents of the University of Oklahoma has the implied power to do everything necessary and convenient to accomplish the objects for which that school was

founded and which is not prohibited either expressly or impliedly by law. And with that final observation—

Judge Broadus: What is that citation, General?

Mr. Williamson: 461 Oklahoma 268.

I also call the Court's attention in conclusion to the decision of the State Supreme Court of Oklahoma in the first Sipuel case. Of course the second Sipuel case the Court will remember, was an application or action filed originally in the Supreme Court of the United States. In this Supreme Court of Oklahoma, in this case in an Opinion January 17, 1948, in construing 190 Pacific 2d 437, in construing the Constitution and statutes, takes issue with my friend the lawyer from New York there when he says that these three statutes having fallen there is nothing left on which to base segregation. Well, the Supreme Court of Oklahoma, and I spoke about that in the early portion of this case—there was some little difference of opinion probably between we lawyers, and the Court itself, our State court says this, it says "Policy established by Constitution and statutes is to segregate white and Negro races for purpose of education at institutions of higher learning."

In our brief we will develop the fact that there [fol. 145] are two sections, two articles in the Oklahoma Constitution, one of them is Article 13, which provides for what practically all lawyers in all courts agree is the method and plan and constitutional provision for common school education in Oklahoma. That is Article 13 in the Constitution, but Article 23 of the Constitution, Section 11, I believe it is, says that wherever in this Constitution the word "colored person or Negro" is used, that it means all and every age of person of that race. Now that is not the exact wording. I am recalling it from memory.

We would like leave to cite those and other applicable matters that we deem applicable in a brief to be filed with all expedition. We don't desire to delay it at all.

Judge Murrah: Just a moment. Now the Court understands that, in order that counsel may understand it: The questions presented to us are first, whether or not the plaintiff McLaurin has on the facts developed today been denied and is being denied the equal protection of the law. You agree to that.

Now with respect to Wilson, the Court is of the opinion that she comes within the scope of the pleadings, so you will

have no precedural problems of pleadings. The narrow question is whether or not she is similarly situated. Do you understand that?

Mr. Marshall: Yes, sir.

[fol. 146] Judge Murrah: Is that your understanding about it? Well, of course you do not agree. You think that she doesn't come within the scope of the pleadings or you suggest she does not.

Mr. Williamson: That's right.

May I observe to the Court that we are not prepared to go into the formal hearing of the Mauderie Wilson matter without further pleadings being filed.

Judge Murrah: Well, I understand that the matter is squarely presented to us.

Mr. Williamson: I understand, but I say that it is our position in the case, the Court understands me, in case the ruling is against us, I want the record there sure.

Judge Murrah: Your protest is recorded but we will decide this question first: Whether or not McLaurin has on these facts been deprived of the equal protection of law, and second: Whether or not Wilson is similarly situated, therefore entitled to the same relief.

Now you have the privilege of filing a brief if you wish or memorandum authorities. We hope that you will make it very brief. Primarily we are interested in authorities. We understand your position.

Mr. Marshall: If your Honor pleases, if it is all right with the Attorney General, since we are the moving parties, may I be permitted to answer his brief when he files [fol. 147]. his, because anything we said in our brief will be what I have already said.

Judge Murrah: We thought you would exchange it and expedite the matter in five days, give you five days, both parties, to file whatever they wish to file. If we wait to answer it, it might be thirty days.

Mr. Marshall: We agree with the five days, sir.

Judge Murrah: Five days.

Mr. Williamson: Quite all right.

Judge Murrah: File anything you wish to file, but we hope you will keep it short.

Mr. Williamson: Our briefs will cross in the mail.

Judge Murrah: And if you wish to add surrebuttal the next day, that will be permissible.

Would it be necessary to convene the Court or can the Court file its Judgment? If we do so it will be necessary to give notice.

Mr. Williamson: We would think the matter ought to stand submitted at this time subject to briefing and decision.

Mr. Marshall: If there be any technicalities we waive them.

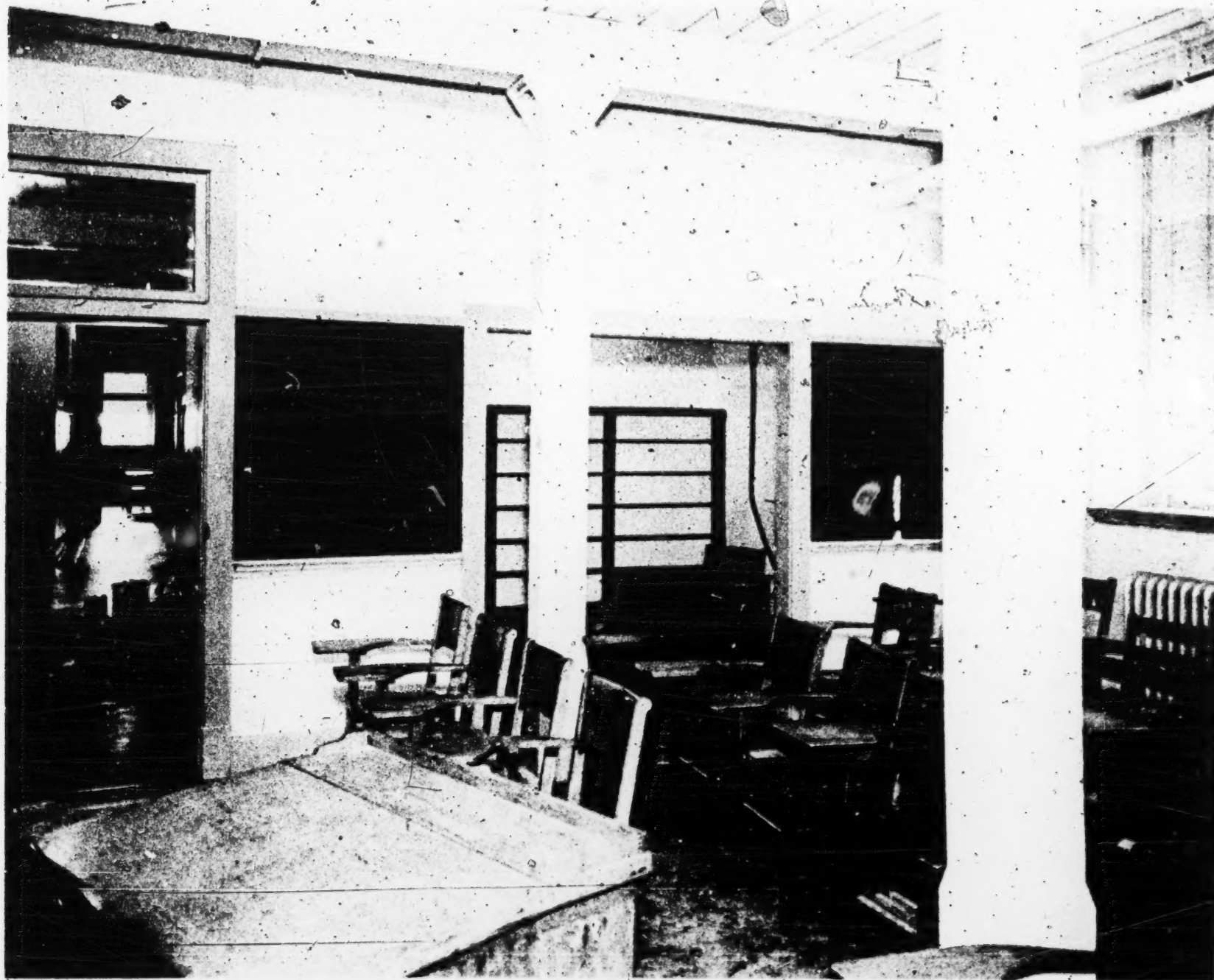
Judge Murrah: Well, there are no technicalities that except unless you think it is necessary for us to formally convene.

[fol. 148-149] Mr. Marshall: No, sir.

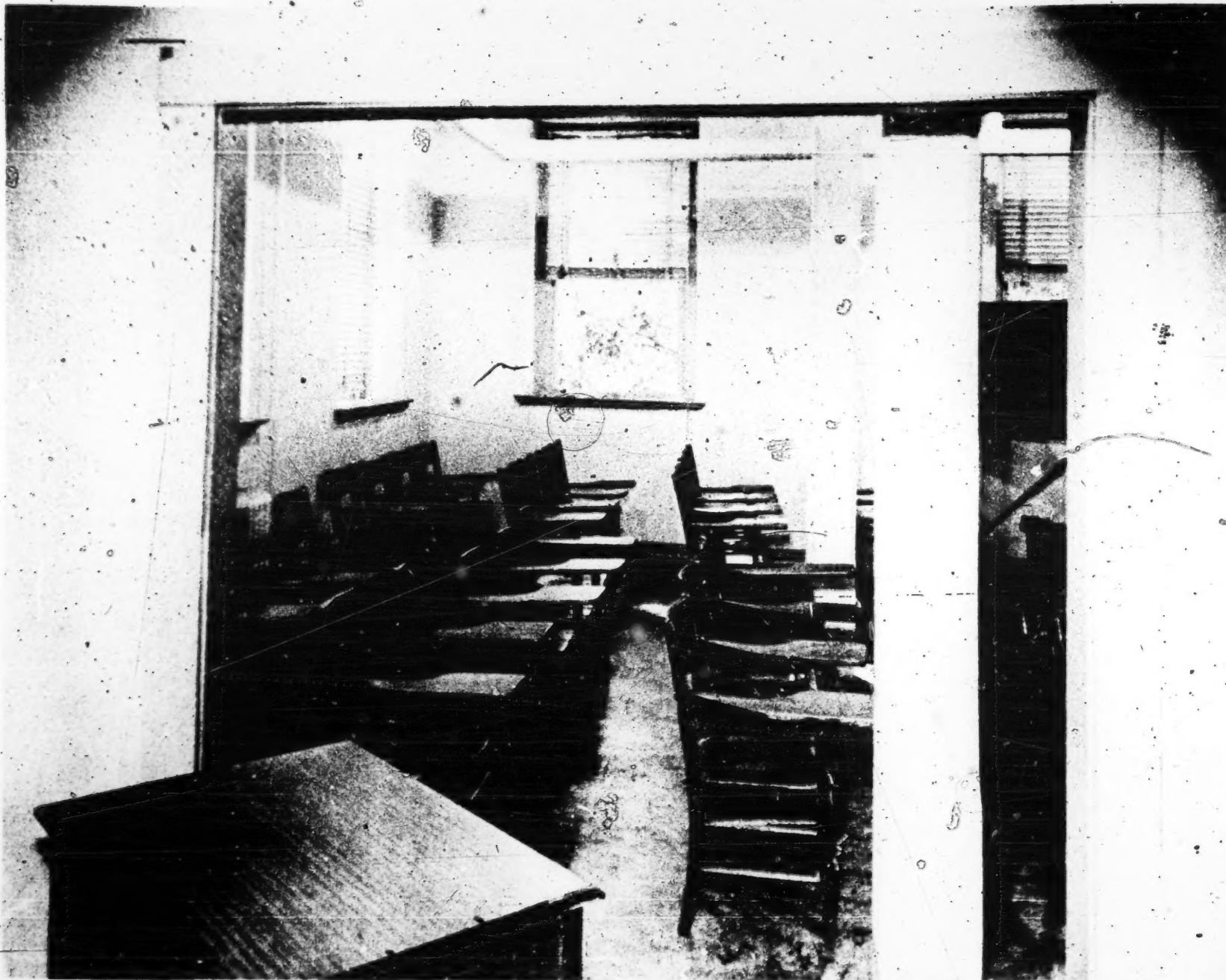
Judge Murrah: This matter is submitted and this Court is at recess.

(Whereupon, the proceedings in the above-styled case were adjourned.)

PLAINTIFF'S EXHIBIT 1



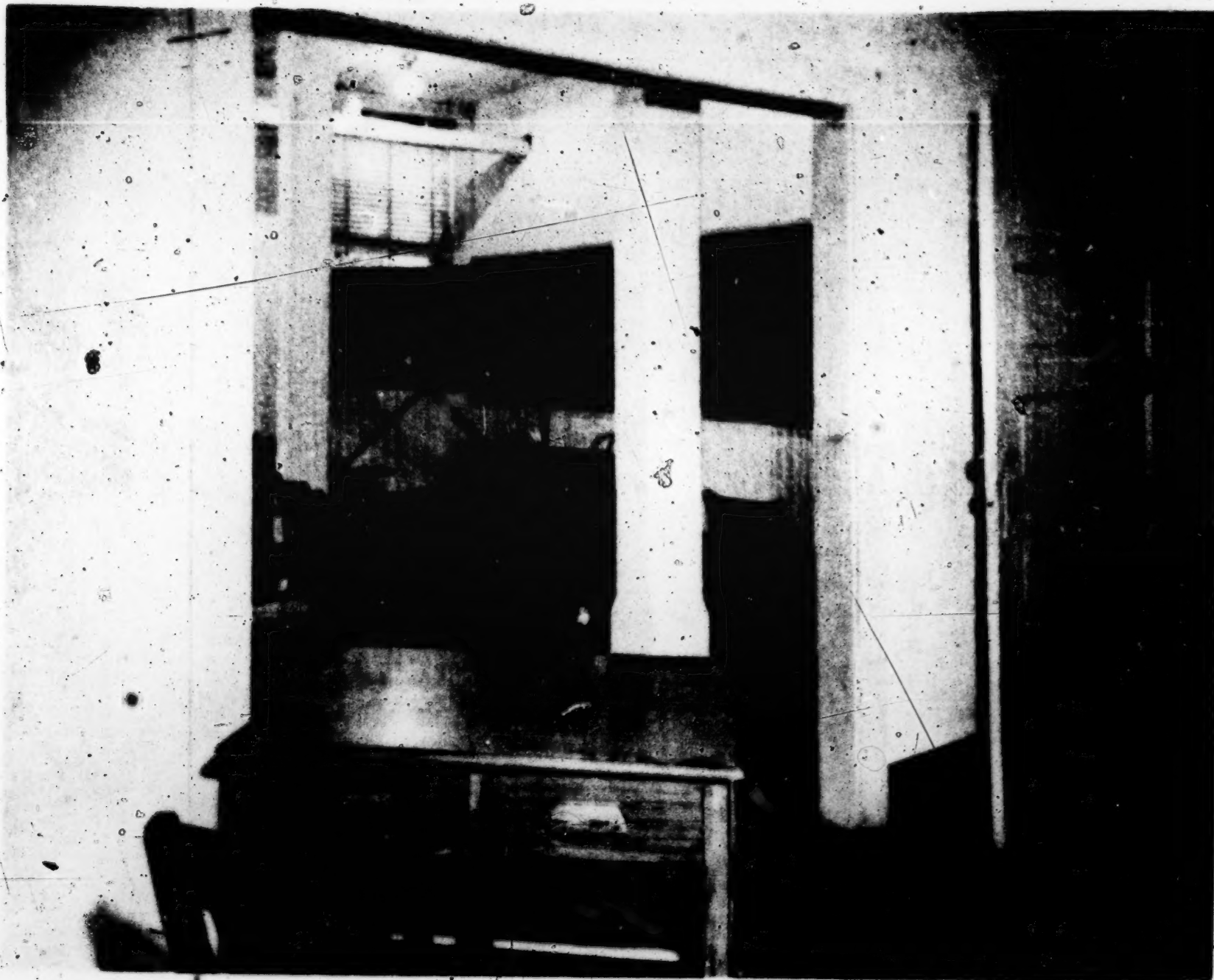
PLAINTIFF'S EXHIBIT 2



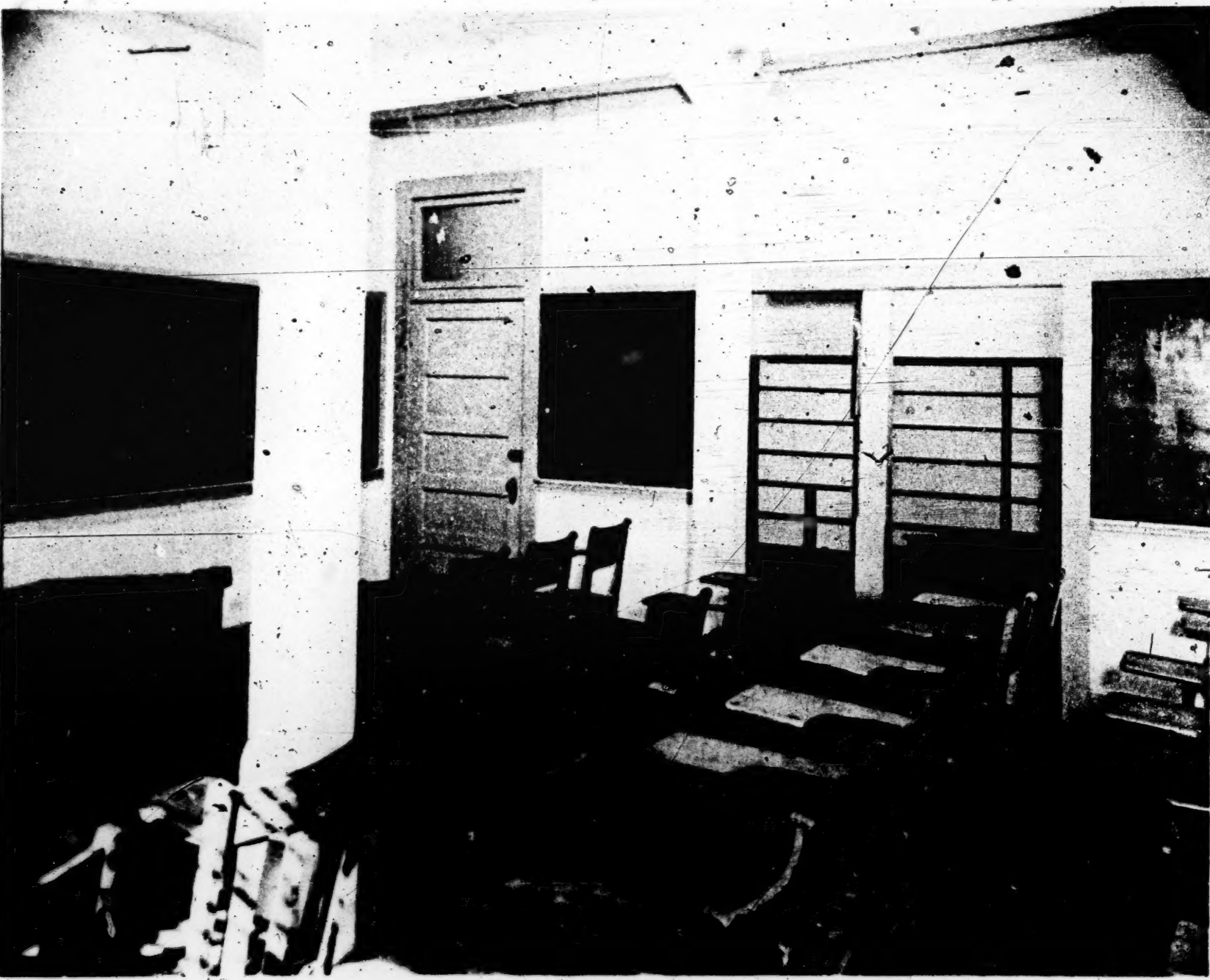
PLAINTIFF'S EXHIBIT 3



PLAINTIFF'S EXHIBIT 4



PLAINTIFF'S EXHIBIT 5



[fol. 155]

PLAINTIFF'S EXHIBIT 6

From the minutes of a special meeting of the Regents of the University of Oklahoma held on Sunday, Oct. 10, 1948.

Regent Emery: "I now offer the following motion and move its adoption: 'That the Board of Regents of the University of Oklahoma authorize and direct the President of the University, and the appropriate officials of the University, to grant the application for admission to the Graduate College of G. W. McLaurin in time for Mr. McLaurin to enroll at the beginning of the term, under such rules and regulations as to segregation as the President of the University shall consider to afford to Mr. G. W. McLaurin substantially equal educational opportunities as are afforded to other persons seeking the same education in the Graduate College and that the President of the University promulgate such regulations'."

A roll call vote was asked for with the following voting AYE:

Regent Emery
Regent Shepler
Regent White
Regent Benedum
Regent Deacon
Regent McBride

Absent:

Regent Noble

[fol. 156]

PLAINTIFF'S EXHIBIT 7

THE ATTORNEY GENERAL OF OKLAHOMA
Oklahoma City, Okla.

October 6, 1948

Honorable G. L. Cross, President
University of Oklahoma
Norman, Oklahoma

Dear Sir:

Your telegram of Saturday afternoon, October 2 (delivered Monday morning), reads as follows:

"It is the legal obligation of the Board of Regents to admit McLaurin in event he presents himself for admission to graduate college of University of Oklahoma next week. Urgency of the matter necessitates immediate action and your opinion by Wednesday,

October 6 by 3 P.M. when Board of Regents reconvenes will be appreciated.

G. L. CROSS, President."

On September 29, 1948, and after a prior hearing thereon, the three-judge federal court of the Western District of Oklahoma has convened in the McLaurin case (speaking through Circuit Judge Murrah), rendered an oral declaratory judgment upon the law and facts in the McLaurin case, the pertinent part thereof reading as follows:

"the Court holds that the plaintiff in this case is * * * entitled to secure post graduate education in this State by a state institution. The Court further holds that to this time he has been denied that right, although application has been duly made therefor during the same period these particular educational facilities have been afforded by the State to other groups.

"The Court further holds that the State is under the constitutional duty to provide this plaintiff with the education he seeks as soon as it does for applicants of any other group. * * *

"The Court further holds that *in so far as* the statutes of the State of Oklahoma drawn in issue here deny or deprive this plaintiff of admission to the University of Oklahoma for the purpose of pursuing the [fol. 157] course he seeks to pursue there, [said statutes] are unconstitutional and void. Now that does not mean, of course that these laws cannot be made to stand, with the power of the State to provide equal segregated facilities, provided that those facilities are equal and that they are afforded as soon as they are afforded to any other group. * * *

"* * * we sit as a court of equity with power to fashion our decree in accordance with right and justice under the law. Accordingly, we refrain at this time from issuing or granting injunctive relief on the assumption that the State will follow the law in the constitutional mandate.

"We retain jurisdiction of this case, however, with full power to issue such further orders and decrees as may be deemed necessary and proper to secure this plaintiff the equal protection of the laws, which, translated into terms of this lawsuit, means * * * equal educational facilities. We therefore recess this case at

this time, with the understanding that either party may apply for further relief consistently with the pleadings in the case. * * *

"We will prepare a formal judgment and decree in accordance with this forthwith, and within the next few days, but that is the judgment of this Court, and judgment entered as of this date."

Referring to your inquiry as to "... the legal obligation of the Board of Regents to admit McLaurin in event he presents himself for admission to graduate college of University of Oklahoma next week," your attention is directed to an opinion of this office dated October 2, 1948, based on the McLaurin case ruling by the three-judge court, and directed to Governor Roy J. Turner, wherein (among other things) it was held as follows (referring to McLaurin's application for admission to the University of Oklahoma for scholastic work leading to a doctorate degree—admittedly, not offered as a course of Langston University):

- "(1) Plaintiff [McLaurin] will be entitled to enroll in said classes in said graduate courses of instruction, in which courses he will be entitled to remain on the *same scholastic basis* as other students until [fol. 158] similar classes in substantially equal courses of instruction are established and ready to function at Langston University; or
- "(2) The University of Oklahoma *will not be entitled* to enroll any applicant of any group in said classes until substantially equal courses of instruction are established and ready to function at Langston University."

We arrive at the conclusion above expressed as a result of the ruling of said three-judge court hereinabove set forth and more particularly, upon consideration of the following paragraph of said ruling:

"The Court further holds that in so far as the statutes of the State of Oklahoma drawn in issue here deny or deprive this plaintiff of admission to the University of Oklahoma for the purpose of pursuing the course he seeks to pursue there, are unconstitutional and void. Now that does not mean, of course, that these laws cannot be made to stand, with the power of the State to provide equal segregated facilities, provided

that those facilities are equal and that they are afforded as soon as they are afforded to any other group."

While this language follows the logic and purport of the United States Supreme Court decision in the Sipuel case, yet it stands as the first time that any court has directly declared the penal statutes (70 O.S. 1941: §§ 455, 456 and 457) prohibiting scholastic intermixture in higher education to be unconstitutional and void. Also, it is the first instance where a court has passed upon the precise question of a negro plaintiff's admission to a state supported college, using *the University of Oklahoma*, by name. Thus, we have by judicial decree, a voiding—a striking down—of the state's traditional policy of scholastic segregation in higher education, directly applied to entrance of plaintiff, McLaurin, to the University of Oklahoma.

While the injunctive relief was (for the time being) withheld, yet the decision notes the assumption of the court "that the State will follow the law"

So that now, the duty and policy of the Regents of the University of Oklahoma is for the first time laid down by order of court, directed to the regents, and premised upon the assumption that they, as agents of the state, will follow the law. This is, of course, an entirely different situation from any that the Board of Regents has faced in the various recurring angles of the segregation litigation with [fol. 159] which the state has been beset, in and during the past year, or more. And the fact should not be here lost sight of, that colored applicants generally are not privileged as a class to enter any and all graduate schools for higher instruction (not provided at Langston); but *only* those who have heretofore made application at Oklahoma University for courses similar to the McLaurin application.

Now, directing your attention for the moment to the concluding paragraph of the judgment of the three-judge court, as follows:

"We will prepare a formal judgment and decree in accordance with this forthwith, and within the next few days, but that is the judgment of this Court, and judgment entered as of this date."

It is the considered judgment of the Attorney General that the Regents of the University of Oklahoma would be excused in withholding (should they so desire) final judg-

ment on such course as they may determine to pursue until they have had opportunity to receive, study and compare the formal judgment and decree of the court herein. Of course, it is understood that this will be forthcoming in a matter of a very few days.

In the opinion of the Attorney General, the above paragraphs numbered 1 and 2, together with the above-stated observation upon temporary delay pending receipt of a formal decree, constitute the bounds and limits within which the Regents of Oklahoma University are required to chart a course of action in the McLaurin case; this, by virtue of the clear and concise language in the court's judgment, as above quoted. And upon this point we may here observe that in our opinion, if the Regents of Oklahoma University should not see fit to follow one of the alternatives above set forth, then in that event and upon application therefor by McLaurin, the writ of injunction, as prayed for, would by said court be issued.

Consequently, the Attorney General holds that the Regents of Oklahoma University will have to determine, in the exercise of their sound discretion, which of the two alternatives above set forth they will follow, or whether they will by inaction put themselves in the position of inviting compulsion of the writ against them.

In this connection you may be interested in knowing that one of the questions in Governor Turner's recent (October 1, 1948) inquiry to this office was as follows:

[fol. 160] -2. "I would like to be further advised as to the authority of the Board of Regents of the University of Oklahoma to enact rules and regulations that would offer instruction to McLaurin in accordance with the Federal Court's ruling, but would preserve, in so far as we may do so, segregated instruction at the University."

Upon this point, we advised the Governor (in our October 2 opinion) as follows:

"In reply to your second question, you are advised that Section 8, Article 13 of our State Constitution, adopted July 11, 1944, provides that the 'government of the University of Oklahoma shall be vested' in the Board of Regents of the University of Oklahoma; Chapter 32, Title 70, page 546, Oklahoma Session Laws

1947, vitalizes or amplifies said constitutional amendment. Section 3 of said act provides that said board

'shall constitute a body corporate, by the name of "Regents of the University of Oklahoma", and shall possess all the powers necessary or convenient to accomplish the objectives and perform the duties prescribed by law.'

and Section 5 of said act provides that the board 'shall enact rules for the government of the University and all its branches.'

"The Attorney General has been unable to locate any decision expressly holding that the Governing board of an educational institution, such as the Board of Regents of the University of Oklahoma, has authority to enact a rule or regulation such as is referred to by you, or whether same would or would not violate the equal protection clause of the Fourteenth Amendment of the Constitution of the United States. However, during the oral argument before the Supreme Court of the United States in the Sipuel case, supra, Justice Frankfurter suggested from the bench three ways in which Oklahoma could comply in said case with said clause. In this connection we quote from a news story relating to the Sipuel case in the [fol. 161] Daily Oklahoman of January 14, 1948, wherein under the headline 'STATE EXPECTS EARLY REVIEW OF NEGRO CASE,' it is in part stated:

'While the case was being argued before the high bench last week, Justice Felix Frankfurter suggested three ways in which Oklahoma could handle the matter:

'Let Mrs. Fisher attend law school classes with white students.

'Let her into the law school on a segregation basis, giving her a private teacher.

'Admit her according to Plan No. 1 or No. 2, but only until a Negro state law school is established.'

"Inasmuch as no other member of said court expressed a different view, we assume that the suggestions made by Justice Frankfurter represented not only his personal views but those of the Court.

"The Attorney General is, therefore, of the opinion that the Board of Regents of the University of Oklahoma is authorized to enact rules and regulations such as are referred to by you, and that same would not violate said equal protection clause nor the ruling of the federal district court herein."

A copy of said opinion to Governor Turner is herewith enclosed.

Most Respectfully,

Attorney General

MQW:LW

Enc.

Approved by Attorney General 10-6-48 LW

[fol. 162] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed Jan. 18, 1949

Now comes, G. W. McLaurin, plaintiff in the above-entitled cause, by his attorneys and respectfully shows that:

On the 22d day of November, 1948 in the above-entitled cause the United States District Court for the Western District of Oklahoma, convened in a three-judge court pursuant to Title 28, United States Code, sections 2281 and 2284, rendered a judgment against plaintiff and in favor of defendants by which judgment the court denied plaintiff the relief requested and refused to enjoin the enforcement of certain statutes of the State of Oklahoma and a certain order of the Board of Regents of the University of Oklahoma acting as a state board on the ground that said statutes and order were unconstitutional in that they were in violation of the Constitution of the United States.

On the 5th day of August, 1948, plaintiff filed in the United States District Court for the Western District of Oklahoma a complaint seeking the convening of a three-judge court as required by the then existing section 266 of the Judicial Code for the purpose of securing a preliminary injunction and a permanent injunction against the Oklahoma State Regents for Higher Education, the Board of Regents of the University of Oklahoma and the administrative officers of the University of Oklahoma restraining them from enforcing sections 455-457 of the Oklahoma statutes of 1941. The complaint alleged that plaintiff and other qualified Negro applicants were excluded from admis-

sion to courses of study offered only at the graduate schools of the University of Oklahoma pursuant to the above statutes and orders of the defendants issued thereunder. A preliminary and a permanent injunction against the enforcement of these statutes and orders were sought on the grounds that said statutes and orders denied to the plaintiff and others similarly situated rights and liberties guaranteed by the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution and sections 41 and 43 of Title 8 of the United States Code.

On the 6th day of October, 1948, the three-judge court filed a journal entry that "it is ordered and decreed that insofar as sections 455, 456 and 457, 70 O.S. 1941, are sought [fol. 164] to be applied and enforced in this particular case, they are unconstitutional and unenforceable." The court expressly refrained from issuing and granting any injunctive relief but retained jurisdiction over the subject matter for entering any further orders as may be deemed proper.

On the 7th day of October, 1948 plaintiff filed a motion for further relief alleging that despite the prior ruling of the court, plaintiff had again been denied admission to the graduate school of the University of Oklahoma and requested that the court enter an order requiring the defendants to admit plaintiff "to the graduate school of the University of Oklahoma for the purpose of taking courses leading to a doctor's degree in education, subject only to the same rules and regulations which apply to other students in said school."

At this hearing there was placed in issue the order of the defendant Board of Regents of the University of Oklahoma ordering that the plaintiff be admitted only on a basis of segregation solely because of his race. The plaintiff challenged the order as unconstitutional and the defendants rested upon the validity of such order as within the power of the Board of Regents of the University of Oklahoma as a state board.

At the hearing on said motion for further relief, the essential facts were agreed upon by counsel for both parties and, in addition, plaintiff testified as to the conditions under which he was admitted to the University of Oklahoma subsequent to the filing of the motion for further relief.

[fol. 165] On the 22d day of November, 1948, the three-judge court issued Findings of Fact, Conclusions of Law and Journal Entry. In the Conclusions of Law, the Court held:

a. That the United States Constitution "does not authorize us to obliterate social or racial distinctions which the State has traditionally recognized as a basis for classification for purposes of education and other public ministrations. The Fourteenth Amendment does not abolish distinctions based upon race or color, nor was it intended to enforce social equality between classes and races."

b. "It is the duty of this court to honor the public policy of the State in matters relating to its internal social affairs quite as much as it is our duty to vindicate the supreme law of the land."

c. "The Oklahoma statutes held unenforceable in the previous order of this court have not been stripped of their vitality to express the public policy of the State in respect to matters of social concern."

d. "We conclude therefore that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, having its foundation in the public policy of the State, and does not therefore operate to deprive this plaintiff of the equal protection of the laws."

The journal entry entered by the Court denied the relief prayed for, dismissed the complaint of plaintiff and entered judgment for the defendants.

In the record and proceedings and in the rendition of said judgment there was drawn in question by plaintiff [fol. 166] herein the constitutionality of the above-stated statutes of the State of Oklahoma and the above-stated order of the Board of Regents of the University of Oklahoma acting as a state board. Plaintiff contended that said statutes and order herein are in contravention of and repugnant to the equal protection and due process clauses of the Constitution and Sections 41 and 43 of Title 8 of the United States Code. The decision and judgment of the United States District Court for the Western District of Oklahoma upheld the constitutionality of said statutes and order as against the rights set up and claimed by plaintiff herein under said clauses of the Constitution of the United States all of which is both apparent in the record and

proceedings of the cause and rendition of said decision and judgment.

Wherefore, plaintiff, G. W. McLaurin, feeling aggrieved by the judgment of the Court entered herein on the 22d day of November, 1948, for the reasons set forth in his assignment of errors which is filed herewith, hereby prays an appeal from such judgment to the Supreme Court of the United States and further prays that an order be entered fixing the amount of bond and security to be given by the plaintiff as appellant and conditioned as the law directs and that a transcript of the record on appeal be certified and sent to the Supreme Court of the United States.

Respectfully submitted, Amos T. Hall, 107½ N. Greenwood Avenue, Tulsa, Oklahoma; Thurgood Marshall, 20 West 40th Street, New York, 18, N. Y., Attorneys for Plaintiff.

Robert L. Carter, Constance Baker Motley, Marian W. Perry, Franklin H. Williams, 20 West 40 Street, New York, 18, N. Y., of Counsel.

[fol. 167]

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Jan. 18, 1949

Plaintiff files the following assignment of errors on which he will rely in his appeal to the Supreme Court of the United States from the judgment of this Court entered on November 22, 1948.

The Court errs:

1. In refusing to enjoin the defendants as state officers from enforcing Sections 455, 456 and 457 of the Oklahoma Statutes of 1941 upon the ground that the enforcement of said statutes violated the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and Title 8, Sections 41 and 43 of the United States Code.

[fol. 168] 2. In refusing to enjoin the defendants as state officers from enforcing the order of defendant Board of Regents of the University of Oklahoma requiring the segregation of plaintiff from all other students of the University of Oklahoma solely because of race or color.

upon the ground that said order is a violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and Title 8, Sections 41 and 43 of the United States Code.

3. In ruling as a matter of law that the claim of the plaintiff to an education in a state institution on a non-segregated basis without distinction as to race or color was not a constitutional right but a mere matter of public policy of the State in regard to its internal social affairs.

4. In ruling as a matter of law that the plaintiff's right to public education without racial distinction, segregation or ostracism by the State of Oklahoma was a matter of the internal social affairs of the State of Oklahoma controlled solely by the public policy of the State and was not a right protected by the Constitution of the United States.

5. In ruling as a matter of law that the Oklahoma Statutes previously held by the Court to be unconstitutional and unenforceable could nevertheless be used as a constitutional basis for subsequent orders of the defendants to segregate plaintiff from all other students and thereby ostracize him solely because of race or color.

6. In ruling as a matter of law that state statutes previously declared unconstitutional as applied to plaintiff [fol. 169] by state officers could be applied as a source of public policy to authorize the segregation of plaintiff from all other students of the University of Oklahoma solely because of race or color.

7. In ruling as a matter of law that the order requiring the segregation of plaintiff from the other students solely because of race or color rested "upon a reasonable basis and did not deprive the plaintiff of the equal protection of the laws or the right to liberty as guaranteed by the Constitution."

8. In ruling as a matter of law, in the absence of any evidence whatsoever to establish reasonableness of the classification, that the order requiring the segregation of the plaintiff from all other students solely because of race or color was a classification which rested upon a reasonable basis and did not violate the due process or equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

9. In ruling as a matter of law that the Fourteenth Amendment does not prohibit the State of Oklahoma from making racial distinctions among its citizens in the performance of its governmental function of providing public education at the graduate school level.

PRAYER FOR REVERSAL

For which errors plaintiff prays that the said decision and judgment of the District Court for the Western District [fol. 170] of Oklahoma in the above-entitled cause be reviewed by the Supreme Court of the United States and that the said judgment be reversed and that a judgment be rendered in favor of plaintiff.

Respectfully submitted, Amos T. Hall, 1071¹/₂ N. Greenwood Avenue, Tulsa, Oklahoma; Thurgood Marshall, 20 West 40th Street, New York, 18, New York, Attorneys for Plaintiff.

Robert L. Carter, Constance Baker Motley, Marian W. Perry, Franklin H. Williams, 20 West 40th Street, New York, 18, New York, of Counsel.

[fol. 171]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL Jan. 18, 1949

It appearing to the court that the plaintiff has filed his petition for appeal to the Supreme Court of the United States, and has filed therewith his assignment of errors, and also his statement as to the jurisdiction of the Supreme Court of the United States, as required by Rule 12 of the Supreme Court Rules, duly disclosing that the ~~Supreme~~ Court of the United States has jurisdiction upon appeal to review the judgment in question.

IT IS ORDERED that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the judgment rendered in this cause on the 22nd day of November, 1948, and that plaintiff give a bond with good and sufficient security in the sum of — Dollars. (\$250.00), that he as appellant shall prosecute

his appeal to effect, and answer all damages and costs if he fails to make his appeal good.

Dated Jan. 18, 1949

Alfred P. Murrah.

[fols. 172-198] Citation in usual form omitted in printing.

[fol. 199] Cost Bond on Appeal for \$250.00 filed Jan. 18, 1949 omitted in printing.

[fol. 200]

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO RECORD—Filed Jan. 26, 1949

It is hereby stipulated and agreed by and between the plaintiff and the defendant, above-named, by and through their respective counsel, that the following parts of the record may be prepared as the record to be transmitted to the Clerk of the Supreme Court of the United States:

1. Complaint
2. Motion for Preliminary Injunction and Notice of Hearing
3. Answer of Defendants
4. Stipulation of Facts (Agreed Statement of Facts)
5. Order of August 6, 1948
6. Minutes of August 23, 1948
7. Order of September 21 re-assigning cause for trial on Merits
8. Letter of Governor Turner (Exhibit 1 of Defendants)
9. Transcript of proceedings of September 29, 1948
10. Findings of Fact and Conclusions of Law (October 6, 1948)
11. Journal Entry and Order of Court (October 6, 1948)
12. Motion of Plaintiff to Modify Order and Judgment of September 29, 1948
13. Minutes of hearing of October 25, 1948
14. Finding of Fact and Conclusion of Law (November 22, 1948)
15. Journal Entry and Judgment of November 22, 1948

16. Amendment of Journal Entry of November 22, 1948
17. Transcript of Hearing of October 25, 1948
18. All of Exhibits introduced by plaintiff and defendants, including copies of minutes of Board of Regents
19. Petition for Appeal
20. Assignment of Errors
21. Statement of Jurisdiction
22. Citation
23. Stipulation and Acknowledgement of Service
24. Appeal Bond
25. Stipulation as to Designation of Record

Amos T. Hall, 107½ N. Greenwood Street, Tulsa, [fols. 201-202] —; Thurgood Marshall, 20 West 40th Street, New York 18, New York, Attorneys for Plaintiff. Mac Q. Williamson, Atty. Gen.; Fred Hanson, 1st Asst. Atty. Gen.; George T. Montgomery, Asst. Atty. Gen., Attorneys for Defendants.

Dated Jan. 21, 1949.

[fol. 203]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 204] [Stamp:] Office of the Clerk, Supreme Court, U. S.
Mar. 9, 1949

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1948

No. 614

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed March 9, 1949

Now comes the appellant in the above-entitled cause and for his statement of points to be relied upon adopts his

assignment of errors and states that the entire record should be printed.

Thurgood Marshall, 20 W. 40th Street; New York 18,
N. Y., Counsel for Appellant.

I hereby certify that I have this date mailed a copy of the Above Statement of Points to be Relied Upon and Designation of Parts of the Record to be Printed to the Honorable Mac Q. Williamson, Oklahoma City, Oklahoma, Attorneys for Respondents by Air Mail.

Thurgood Marshall, Attorney for Appellant.

[fol. 205] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1949

No. 34

G. W. McLAURIN, Appellant,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION et al.

ORDER NOTING PROBABLE JURISDICTION—November 7, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

November 7, 1949.

[fol. 206]

Endorsed on Cover; Enter Thurgood Marshall. File No. 53,616, U. S. D. C., Western Oklahoma, Term No. 34, G. W. McLaurin, Appellant, vs. Oklahoma State Regents for Higher Education, Board of Regents of University of Oklahoma, et al. Filed March 1, 1949. Term No. 34 O.T. 1949.